venting the shipment of liquor into dry territory; to the Committee on the Judiciary.

Also, petition of Milton S. Florsheim, Chicago, Ill., favoring the passage of legislation to publish all hearings under the Sherman antitrust law; to the Committee on Interstate and Foreign Commerce.

By Mr. GARNER: Petition of citizens of Mathis, Tex., favoring the passage of the Kenyon-Sheppard bill, prohibiting the shipment of liquor into dry territory; to the Committee on the Judiciary.

By Mr. HARDWICK: Petition of the Sibley Manufacturing Co., Augusta, Ga., and A. Klipstein & Co., New York, both favoring legislation placing zinc dust on the free list; to the Committee on Ways and Means.

By Mr HARTMAN: Petition of the Department of Internal Affairs, Bureau of Standards, Harrisburg, Pa, favoring the passage of House bill 23113, fixing a standard barrel for fruits, vegetables, etc.; to the Committee on Ways and Means.

By Mr. HAYES: Petition of Corlin H. McIsaac, Santa Cruz, Cal.; David Starr Jordan, Stanford University, Cal.; R. W. Putnam, San Luis Obispo, Cal.; and Edwin Duryea, jr., San Francisco, Cal., all favoring the passage of House bill 22589, for the construction of consular and diplomatic buildings at Mexico City, Tokyo, Berne, and Hankow; to the Committee on Foreign Affairs.

Also, petition of S. J. Mayock, Gilroy, Cal., protesting against the passage of the Kenyon-Sheppard bill preventing the shipment of liquor into dry territory; to the Committee on the Judiciary.

Also, petition of W. P. Fuller & Co., San Francisco, Cal., favoring the passage of House bill 25106, for the incorporation of the Chamber of Commerce of the United States of America under a Federal charter; to the Committee on the Judiciary.

Also, petition of the San Francisco District (California) Federation of Women's Clubs, favoring the passage of legislation for the retention of the name of Yerba Buena Island instead of Goat Island; to the Committee on the Territories.

Also, petition of the Political Equality Club, San Jose, Cal., favoring the passage of legislation for the recognition of the Chinese Republic; to the Committee on Foreign Affairs.

Also, petition of Frederick J. Koster, San Francisco, Cal., favoring the passage of Senate bill 4043, preventing the shipment of liquor into dry territory; to the Committee on the Judiciary.

By Mr. LINDSAY: Petition of Harrison Clark, passed department commander State of New York Grand Army of the Republic, favoring the passage of House bill 1339, granting increase of pension to veterans who lost a limb in the Civil War; to the Committee on Invalid Pensions.

By Mr. MARTIN of South Dakota: Petition of citizens of Lincoln, Nebr., favoring the passage of legislation giving a national ownership and control of all public telephone and telegraph wires; to the Committee on Interstate and Foreign Commerce.

By Mr. MOON of Tennessee: Petition of railroad men of Tennessee, protesting against the passage of House bill 5382, the Brantley workmen's compensation bill; to the Committee on the Judiciary.

By Mr. SMITH of New York: Petition of Buffalo Historical Society, Buffalo, N. Y., favoring the passage of legislation for the erection of a proper national archives building at Washington, D. C.; to the Committee on Public Buildings and Grounds.

By Mr. TILSON: Petition of the Warner Bros. Co., Bridgeport, Conn., protesting against the passage of section 2 of the Oldfield patent bill, preventing the manufacturers from fixing the prices on patent goods; to the Committee on Patents.

SENATE.

THURSDAY, *January 9, 1913.*

Prayer by the Chaplain, Rev. Ulysses G. B. Pierce, D. D.

Mr. BACON took the chair as President pro tempore under the previous order of the Senate.

The Secretary proceeded to read the Journal of yesterday's proceedings, when, on request of Mr. GALLINGER and by unanimous consent, the further reading was dispensed with and the Journal was approved.

LOANS IN THE DISTRICT OF COLUMBIA.

Mr. CURTIS. I present a conference report on the disagreeing votes of the two Houses upon the bill (H. R. 8768) to regulate the business of loaning money on security of any kind by persons, firms, and corporations other than national banks, licensed bankers, trust companies, savings banks, building and loan associations, and real estate brokers in the District of Columbia. (S. Doc. No. 998.)

Mr. CRAWFORD. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The Senator from South Dakota suggests the absence of a quorum. The Secretary will call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Ashurst	Crane	Kern	Sanders
Bacon	Crawford	Lodge	Shively
Borah	Cullom	McLean	Simmons
Bourne	Curtis	Martin, Va.	Smith, Ariz.
Bradley	Dillingham	Martine, N. J.	Smoot
Brandegee	Dixon	Nelson	Sutherland
Bristow	du Pont	Newlands	Swanson
Brown	Fletcher	Oliver	Thornton
Bryan	Foster	Page	Tillman
Burnham	Gallinger	Perkins	Townsend
Burton	Gronna	Perky	Warren
Catron	Hitchcock	Poindexter	Wetmore
Chamberlain	Johnson, Me.	Reed	Williams
Clapp	Jones	Richardson	Works
Clark, Wyo.	Kenyon	Root	

Mr. CLAPP (when Mr. LA FOLLETTE's name was called). The senior Senator from Wisconsin [Mr. LA FOLLETTE] is necessarily detained from the Chamber on committee work.

Mr. CLAPP (when Mr. MCCUMBER's name was called). The senior Senator from North Dakota [Mr. MCCUMBER] is necessarily detained from the Chamber on committee work.

Mr. MARTIN of Virginia (when Mr. O'GORMAN's name was called). The junior Senator from New York [Mr. O'GORMAN] is detained from the Senate on official business in connection with Senate work.

Mr. SIMMONS. I desire to announce that my colleague [Mr. OVERMAN] is absent on account of sickness.

Mr. TOWNSEND. The senior Senator from Michigan [Mr. SMITH] is absent on business of the Senate. I will let this announcement stand for the day.

Mr. KERN. I again announce the unavoidable absence of the junior Senator from South Carolina [Mr. SMITH] on account of a death in his family.

The PRESIDENT pro tempore. On the call of the roll of the Senate 59 Senators have responded to their names. A quorum of the Senate is present.

Mr. CURTIS. I call for the reading of the conference report.

The PRESIDENT pro tempore. The Secretary will read the report.

Mr. TOWNSEND. As I understand it, this is a conference report on the so-called loan-shark bill, which has been before the Senate for some time.

The PRESIDENT pro tempore. It has not yet been laid before the Senate.

Mr. TOWNSEND. I will wait.

Mr. REED. As a matter of inquiry, does this take precedence of the order of morning business?

The PRESIDENT pro tempore. The rule of the Senate is that a conference report is always in order, except while the Journal is being read, while the Senate is dividing, and one or two other exceptions. It is in order now.

Mr. REED. Will the Senator from Kansas yield long enough to permit the introduction of a bill?

The PRESIDENT pro tempore. That order has not yet been reached. There are several other orders before the introduction of bills.

Mr. REED. I understand, then, that that order will come, but I thought the Senator from Kansas intended to call up a matter for discussion.

Mr. CURTIS. It will take no time, I will state to the Senator from Missouri.

Mr. REED. Very well.

The PRESIDENT pro tempore. The report will be read.

The Secretary read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 8768) to regulate the business of loaning money on security of any kind by persons, firms, and corporations other than national banks, licensed bankers, trust companies, savings banks, building and loan associations, and real estate brokers in the District of Columbia, having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 1, 3, 6, 7, 8, 9, 10, 11, and 12.

That the House recede from its disagreement to the amendments of the Senate numbered 2, 4, and 5, and agree to the same.

That the Senate recede from its amendment to the title of the bill.

CHARLES CURTIS,
WILLIAM P. DILLINGHAM,
T. H. PAYNTER,
Managers on the part of the Senate.
BEN JOHNSON,
J. A. M. ADAIR,
L. C. DYER,
Managers on the part of the House.

Mr. TOWNSEND. Mr. President, I ask that the conference report be printed and lie over until to-morrow.

Mr. CURTIS. I have no objection to that order, but give notice that immediately after the routine morning business to-morrow I will call up the conference report for action.

The PRESIDENT pro tempore. Under the suggestion of the Senator from Kansas, without objection, the report will be printed and lie over until to-morrow.

SENATOR FROM ARKANSAS.

Mr. WILLIAMS. Mr. President, I present the credentials of the appointment of Mr. J. N. HEISKELL as a Senator from the State of Arkansas.

The PRESIDENT pro tempore. The credentials will be read.

The credentials of J. N. HEISKELL, appointed by the governor of the State of Arkansas a Senator from that State to fill the vacancy in the term ending March 3, 1913, occasioned by the death of Senator JEFF DAVIS, were read and ordered to be filed.

Mr. WILLIAMS. The Senator appointed is present, and I ask that the oath be administered to him.

The PRESIDENT pro tempore. The Senator appointed will present himself at the desk to take the oath of office.

Mr. HEISKELL was escorted to the Vice President's desk by Mr. WILLIAMS, and the oath prescribed by law having been administered to him, he took his seat in the Senate.

REPORT OF ECONOMY AND EFFICIENCY COMMISSION (H. DOC. NO. 1252).

The PRESIDENT pro tempore laid before the Senate a message from the President of the United States, which was read, and, with the accompanying papers and illustrations, ordered to lie on the table and be printed.

(See House proceedings of January 8, 1913.)

FUR SEALS (S. DOC. NO. 997).

The PRESIDENT pro tempore laid before the Senate a message from the President of the United States, which was read and referred to the Committee on Foreign Relations and ordered to be printed.

(See House proceedings of January 8, 1913.)

ELECTORS FOR PRESIDENT AND VICE PRESIDENT.

The PRESIDENT pro tempore laid before the Senate communications from the Secretary of State, transmitting, pursuant to law, authentic copies of the certificate of ascertainment of electors for President and Vice President appointed in the States of Missouri and Pennsylvania at the elections held in those States November 5, 1912, which were ordered to be filed.

INTERSTATE SHIPMENT OF LIQUORS.

Mr. SANDERS. Mr. President——

The PRESIDING OFFICER (Mr. BRANDEGEE in the chair). Petitions and memorials are in order. The Senator from Tennessee.

Mr. SANDERS. Mr. President, last Monday I asked unanimous consent that the bill to prohibit interstate commerce in intoxicating liquors be taken up next Monday. Objection was made on account of the fact that the impeachment trial would take up most of this week and that there would not be time for discussion of the measure. Then on Tuesday I made the same request, making the date one week later, which would be January 20. It was proposed that it should not interfere with appropriation bills. It was also suggested that at that particular time there were not enough Senators in the Chamber to give the request proper consideration.

I now make the same request, with the proviso that it is not to interfere with appropriation bills. I wish to say in this connection that since I brought the matter up on last Tuesday we have been able to determine about when the impeachment trial will be concluded, and that this request, if granted, will still leave one week for a discussion of this bill after the conclusion of the impeachment trial. I therefore send to the desk, Mr. President, the following request.

The PRESIDING OFFICER. The Senator from Tennessee asks unanimous consent for the consideration of the following order, which will be reported by the Secretary.

Mr. REED. Mr. President——

Mr. LODGE. Let it be read. Senators ask that it be read.

Mr. REED. Under what order are we proceeding?

The PRESIDING OFFICER. We are proceeding under the order of petitions and memorials; but the Chair understands that the Senator from Tennessee is requesting unanimous consent——

Mr. REED. Is that in order at this time?

The PRESIDING OFFICER. The Chair thinks it is in order, by unanimous consent, but that it could not be put, out of order, in the event of a single objection.

Mr. REED. The time of the Senate has been consumed this morning by the reading of messages from the President of the United States, and there are some bills that I want to introduce and I think that this request is not in order at this time. I think the only thing that is in order at this time is the presentation of petitions and memorials.

Mr. SANDERS. I understand it is in order.

The PRESIDING OFFICER. The Chair would rule that it is in order for a Senator to ask unanimous consent for the consideration of any matter.

Mr. LODGE. I suppose a request for unanimous consent is equivalent to asking for an order of the Senate, and it would come in under the last order of business—the morning hour—would it not? It would come in legitimately and could not be kept out by a single objection.

The PRESIDING OFFICER. The ruling of the Chair was that unanimous consent could be asked at any time.

Mr. LODGE. That is possible at any time, I agree, but it would be in order at this time regularly under the last order of morning business.

Mr. SANDERS. I ask that this order be read and that unanimous consent be given to place it before the body.

The PRESIDING OFFICER. The Secretary will read the proposed order presented by the Senator from Tennessee.

Mr. REED. Mr. President, I rise to a point of order that the request itself at this time is not in order.

The PRESIDING OFFICER. In the opinion of the Chair the point of order is not well taken.

Mr. REED. To state my point, under this order of business you can no more ask unanimous consent to take up a particular bill than you can do any other thing which does not come under the head of the presentation of petitions and memorials. This is not a petition or a memorial. The Senator could ask unanimous consent to set aside the order of business, but that is not what he is asking. He is asking unanimous consent for the consideration of a bill at a particular time.

Mr. SANDERS. Mr. President, I rise to a point of order.

The PRESIDING OFFICER. The Senator from Missouri has the floor and is speaking to a point of order.

Mr. SANDERS. My point of order is that the Chair has already ruled.

The PRESIDING OFFICER. The Chair had ruled. The Secretary will report the request.

Mr. REED. Mr. President, I object.

The PRESIDING OFFICER. Objection is made to the consent asked for by the Senator from Tennessee. Are there further——

Mr. MARTINE of New Jersey. I desire to present certain petitions.

Mr. NELSON. We have a right to hear the request read, because we have a right to determine whether the objection is good or not.

The PRESIDING OFFICER. The Secretary was about to report the request, which was verbally stated by the Senator from Tennessee. If there is demand for it, the Secretary will report the request that is made in writing.

The Secretary read as follows:

It is agreed by unanimous consent that on Monday, January 20, at 3 o'clock p. m., the bill (S. 4043) to prohibit interstate commerce in intoxicating liquors be taken up for consideration, not to interfere with appropriation bills, and that the vote be taken on all amendments pending and amendments to be offered, and upon the bill itself, not later than the hour of 6 o'clock on that day.

The PRESIDING OFFICER. Objection is made.

PETITIONS AND MEMORIALS.

Mr. GALLINGER presented a petition of Starr King Chapter, No. 32, Order of Eastern Star, of Berlin, N. H., praying that an appropriation be made for the erection of a public building in that city, which was referred to the Committee on Public Buildings and Grounds.

He also presented a petition of the Woman's Christian Temperance Union of Berlin, N. H., praying for the passage of the so-called Kenyon-Sheppard interstate liquor bill, which was ordered to lie on the table.

Mr. McLEAN presented a memorial of members of the German-American Alliance of Bridgeport, Conn., remonstrating against the passage of the so-called Kenyon-Sheppard interstate liquor bill, which was ordered to lie on the table.

Mr. MARTINE of New Jersey presented a petition of the congregation of the First Presbyterian Church of Hamilton Square, N. J., praying for the passage of the so-called Kenyon-Sheppard interstate liquor bill, which was ordered to lie on the table.

Mr. LODGE presented a petition of sundry citizens of Stoneham, Mass., praying for the passage of the so-called Kenyon-Sheppard interstate liquor bill, which was ordered to lie on the table.

REPORTS OF COMMITTEES.

Mr. WARREN, from the Committee on Military Affairs, to which was referred the bill (S. 7515) for the relief of Col. Richard H. Wilson, Fourteenth Infantry, United States Army, reported it with an amendment and submitted a report (No. 1087) thereon.

Mr. SMOOT, from the Committee on Public Lands, to which was referred the bill (S. 7638) to provide for State selections on phosphate and oil lands, reported it with amendments and submitted a report (No. 1088) thereon.

Mr. JONES, from the Committee on Public Lands, to which were referred the following bills, reported them each without amendment and submitted reports thereon:

S. 5377. A bill releasing the claim of the United States Government to lot No. 306, in the old city of Pensacola (S. Rept. 1090); and

S. 5378. A bill releasing the claim of the United States Government to that portion of land, being a fractional block, bounded on the north and east by Bayou Cadet, on the west by Cevallos Street, and on the south by Intendencia Street, in the old city of Pensacola (S. Rept. 1089).

Mr. CURTIS, from the Committee on Pensions, to which was referred the bill (H. R. 27062) granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent children of soldiers and sailors of said war, reported it with amendments and submitted a report (No. 1091) thereon.

He also, from the same committee, to which were referred certain bills granting pensions and increase of pensions, submitted a report (No. 1092) accompanied by a bill (S. 8034) granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent relatives of such soldiers and sailors, which was read twice by its title, the bill being a substitute for the following Senate bills heretofore referred to that committee.

S. 33. Ellen B. Kittredge.
S. 300. Thomas W. Dickey.
S. 437. Mary E. McDermott.
S. 921. Henry Frink.
S. 1115. Christian C. Bradymeyer.
S. 1223. George M. Pierce.
S. 2106. Joseph C. Trickey.
S. 2293. James M. Kinnaman.
S. 2379. Addie Roof.
S. 2490. Leeman Underhill.
S. 2563. Charles W. Morgan.
S. 2634. Alphonso L. Stasy.
S. 2948. Jeremiah Lushbough.
S. 3178. James B. Sales.
S. 3304. Mary E. Rikard.
S. 3370. Margaret H. Benjamin.
S. 3490. Benjamin F. Ferris.
S. 3522. Hiram Ferrier.
S. 3573. Henry B. Leach.
S. 3597. John Bell.
S. 3665. Elizabeth Lile.
S. 3666. George M. Conner.
S. 3673. Lola B. Hendershott and Louise Hendershott.
S. 3748. Daniel H. Grove.
S. 3993. Charlotte R. Coe.
S. 4123. Caroline M. Packard.
S. 4255. Benjamin C. Smith.
S. 4656. George R. Griffith.
S. 4802. Rolly Wright.
S. 4819. Charles J. Higgins.
S. 4989. Joseph Letzkus.
S. 5033. Israel H. Phillips.
S. 5136. John E. Woodward.
S. 5171. Josephine A. Davis.
S. 5329. Osmer C. Coleman.
S. 5339. Hugh McLaughlin.
S. 5514. Joseph Striker.
S. 5528. Mary Glancey.
S. 5562. Joby A. Howland.
S. 5657. Andrew King.
S. 5852. Mary S. Hull.
S. 6012. Sarah E. Haskins.
S. 6169. Ira Waldo.
S. 6270. Ellis C. Howe.
S. 6452. Thomas M. Dixon and Joanna L. Dixon.
S. 6606. Solomon Wilburn.
S. 6651. William O. Sutherland.
S. 6664. Annie H. Ross.
S. 6739. John Dixon.
S. 6750. Arnold Bloom.
S. 6759. John D. Perkins.
S. 6787. William Harrison.
S. 6791. Sarah E. Johnson.
S. 6873. Willis Dobson.
S. 6878. Zachariah T. Fortner.
S. 6931. Jesse A. Moore.
S. 6938. James Moynahan.
S. 6955. Dustin Berrow.
S. 6966. Sarah J. Viall.
S. 6968. James Luther Justice.
S. 6973. Mary A. Crocker.
S. 7000. Winfield S. McGowan.
S. 7025. Martha J. Stephenson.
S. 7047. George E. Smith.
S. 7076. Roscoe B. Smith.
S. 7084. Mate Fulkerson.
S. 7100. Fred D. Bryan.
S. 7108. Ada M. Wade.
S. 7136. Charlotte M. Snowball.
S. 7137. Albert White.
S. 7164. William W. Lane.
S. 7173. Lydia M. Jacobs.
S. 7190. Albert Burgess.
S. 7200. Rosa L. Couch.
S. 7214. John Cook, alias Joseph Moore.
S. 7215. Amanda Barrett.
S. 7216. Alvah S. Howes.
S. 7219. George C. Rider.
S. 7224. Charles C. Littlefield.
S. 7276. Martha Dye.
S. 7282. Carrie Hitchcock.
S. 7363. Sarah McLaury.
S. 7376. William H. Frederick.
S. 7460. Joseph D. Iler.
S. 7510. Rodney S. Vaughan.
S. 7526. Isaac A. Sharp.
S. 7529. Turner S. Bailey.
S. 7547. Alpheus K. Rodgers.
S. 7556. Christina Higgins.
S. 7557. Josiah B. Hall.
S. 7569. Ellen Tyson.
S. 7581. William Hoover.
S. 7587. Abby E. Carpenter.
S. 7588. Sarah Gross.
S. 7595. Nelson Taylor.
S. 7596. Carrie Crockett.
S. 7615. Lucy H. Collins.
S. 7624. Royal H. Stevens.
S. 7628. Araminta G. Sargent.
S. 7661. Sidney P. Jones.
S. 7664. Ann T. Smith.
S. 7677. Ellen E. Clark.
S. 7701. Sarah B. Paden.
S. 7717. Edmund P. Banning.
S. 7719. Winchester E. Moore.
S. 7730. Mary P. Pierce.
S. 7775. John B. Ladeau.
S. 7781. Christopher P. Brown.
S. 7791. Allen Price.
S. 7805. Delphine R. Burritt.

He also, from the same committee, to which were referred certain bills granting pensions and increase of pensions, submitted a report (No. 1093) accompanied by a bill (S. 8035) granting pensions and increase of pensions to certain soldiers and sailors of the Regular Army and Navy and of wars other than the Civil War, and to certain widows and dependent relatives of such soldiers and sailors, which was read twice by its

title, the bill being a substitute for the following Senate bills heretofore referred to that committee:

S. 1915. Caroline M. Anthony.
S. 2465. Arthur F. Shepherd.
S. 3615. Walter L. Donahue.
S. 3726. Calvin R. Lockhart.
S. 3920. Albert J. Wallace.
S. 4691. Thomas M. F. Delaney.
S. 6091. Joseph Hurd.
S. 6101. John D. Sullivan.
S. 6107. Mary E. Maher.
S. 6193. George W. James.
S. 6276. George G. Thirlby.
S. 6764. Lansing B. Nichols.
S. 6883. Jacob Korby.
S. 6898. John J. Ledford.
S. 6921. Deborah H. Riggs.
S. 6998. Elmer E. Rose.
S. 7021. Cyrenius Mulkey.
S. 7032. Patrick J. Whelan.
S. 7036. John F. Burton.
S. 7065. Ephraim W. Baughman.
S. 7135. James J. Blevans.
S. 7281. Henry H. Woodward.
S. 7305. Bertie L. Wade.
S. 7328. Charlotte R. Wynne.
S. 7368. Otto Weber.
S. 7466. Carl W. Carlson.

THE JUDICIAL CODE.

Mr. SMOOT. I am directed by the Committee on Printing, to which was referred Senate concurrent resolution 34, for the printing of 25,000 copies of the Judicial Code, to report it with amendments, and I ask unanimous consent for its present consideration.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the concurrent resolution.

The amendments were, in line 2, before the word "thousand," to strike out "twenty-five" and insert "thirty," and at the end of the resolution to insert the words "and 5,000 copies for the use of the Senate document room."

The amendments were agreed to.

The concurrent resolution as amended was agreed to, as follows:

Resolved by the Senate (the House of Representatives concurring), That there be printed 30,000 copies of the Judicial Code of the United States, prepared under the direction of the Judiciary Committee of the Senate, 10,000 copies of which shall be for the use of the Senate and 15,000 copies for the use of the House of Representatives, and 5,000 copies for the use of the Senate document room.

BILLS AND JOINT RESOLUTIONS INTRODUCED.

Bills and joint resolutions were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. CHAMBERLAIN:

A bill (S. 8036) granting an increase of pension to George S. Pauer; to the Committee on Pensions.

By Mr. KERN:

A bill (S. 8037) for the relief of Israel Sturges; and

A bill (S. 8038) for the relief of James M. Blankenship (with accompanying papers); to the Committee on Military Affairs.

A bill (S. 8039) granting a pension to Delia E. Godfrey (with accompanying papers); to the Committee on Pensions.

By Mr. JONES:

A bill (S. 8040) for the relief of the Pacific Creosoting Co.; to the Committee on Claims.

By Mr. OWEN:

A bill (S. 8041) granting a pension to Seberon J. M. Cox (with accompanying papers); and

A bill (S. 8042) granting an increase of pension to Samuel L. Hess (with accompanying papers); to the Committee on Pensions.

By Mr. McLEAN:

A bill (S. 8043) granting an increase of pension to Mary E. Beach (with accompanying papers); and

A bill (S. 8044) granting an increase of pension to John McCarthy (with accompanying papers); to the Committee on Pensions.

By Mr. ASHURST:

A bill (S. 8045) opening the surplus and unallotted lands in the Colorado River Indian Reservation to settlement under the provisions of the Carey land acts, and for other purposes; to the Committe on Indian Affairs.

By Mr. BURNHAM:

A bill (S. 8046) granting a pension to Anna Kennedy; to the Committee on Pensions.

By Mr. ROOT:

A bill (S. 8047) to enable the Secretary of War to pay the amount awarded to the Malambo fire claimants by the joint commission under article 6 of the treaty of November 18, 1903, between the United States and Panama; to the Committee on Appropriations.

A bill (S. 8048) to provide for the purchase of a site and the erection of a public building thereon at Walden, N. Y.; to the Committee on Public Buildings and Grounds.

By Mr. OLIVER:

A bill (S. 8049) granting an increase of pension to Harvey T. Smith (with accompanying papers); to the Committee on Pensions.

By Mr. WILLIAMS:

A bill (S. 8050) to carry into effect the findings of the Court of Claims in the matter of the claim of Elizabeth Johnson; to the Committee on Claims.

A bill (S. 8051) authorizing the Secretary of War, in his discretion, to deliver to the town of Washington, in the State of Mississippi, for the use of Jefferson College, one condemned cannon, with its carriage and outfit of cannon balls; and

A bill (S. 8052) authorizing the Secretary of War, in his discretion, to deliver to the city of Corinth, in the State of Mississippi, one condemned cannon, with its carriage and outfit of cannon balls; to the Committee on Military Affairs.

By Mr. REED:

A bill (S. 8053) to authorize the creation of a temporary commission to investigate and make recommendation as to the necessity or desirability of establishing a national aerodynamical laboratory, and prescribing the duties of said commission, and providing for the expenses thereof; to the Committee on Naval Affairs.

A bill (S. 8054) to provide for the enlargement, extension, remodeling, and improvement of the post-office building at Moberly, Mo., and for other purposes; to the Committee on Public Buildings and Grounds.

By Mr. MARTINE of New Jersey:

A bill (S. 8055) granting a pension to Gilbert J. Jackson (with accompanying papers); and

A bill (S. 8056) granting a pension to John J. Miller (with accompanying papers); to the Committee on Pensions.

By Mr. CRAWFORD:

A bill (S. 8057) regulating the issuance of interlocutory injunctions restraining the enforcement of orders made by the Interstate Commerce Commission, and orders made by administrative boards or commissions created by and acting under the statutes of a State; to the Committee on the Judiciary.

By Mr. OWEN:

A joint resolution (S. J. Res. 149) extending the time for the survey, classification, and appraisement of the surface of the segregated coal and asphalt lands of the Choctaw and Chickasaw Nations in Oklahoma (with accompanying paper); to the Committee on Indian Affairs.

By Mr. WARREN:

A joint resolution (S. J. Res. 150) appropriating $40,000 for expenses of inquiries and investigations ordered by the Senate; to the Committee on Appropriations.

By Mr. MARTIN of Virginia:

A joint resolution (S. J. Res. 151) authorizing the Librarian of Congress to return to Williamsburg Lodge, No. 6, A. F. and A. M., of Virginia, the original manuscript of the record of the proceedings of said lodge; to the Committee on the Library.

SECOND PAN AMERICAN SCIENTIFIC CONGRESS.

Mr. ROOT submitted an amendment proposing to appropriate $50,000 to enable the Government of the United States to participate in the second Pan American Scientific Congress, to be held in Washington, D. C., October, 1914, intended to be proposed by him to the diplomatic and consular appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed.

OMNIBUS CLAIMS BILL.

The PRESIDING OFFICER. The hour of 1 o'clock having arrived——

Mr. CRAWFORD. I desire to give notice that I shall ask the Senate to resume the consideration of the omnibus claims bill at the close of the morning business to-morrow.

Mr. WILLIAMS and Mr. REED addressed the Chair.

The PRESIDING OFFICER. The Chair is compelled to carry out the order of the Senate, which is that at 1 o'clock it will reconvene as a Court of Impeachment.

IMPEACHMENT OF ROBERT W. ARCHBALD.

The PRESIDENT pro tempore (Mr. BACON) took the chair and announced that the time had arrived for the consideration of the articles of impeachment against Robert W. Archbald.

The respondent appeared with his counsel, Mr. Worthington, Mr. Simpson, Mr. Robert W. Archbald, jr., and Mr. Martin.

The managers on the part of the House of Representatives appeared in the seats provided for them.

The PRESIDENT pro tempore. The Sergeant at Arms will make proclamation.

The Sergeant at Arms made the usual proclamation.

The PRESIDENT pro tempore. The Secretary will read the Journal of the last sitting of the Senate for the consideration of the articles of impeachment.

The Secretary read the Journal of the proceedings of the Senate of Wednesday, January 8, 1913, when sitting as a court.

The PRESIDENT pro tempore. Are there any inaccuracies in the Journal? If not, it will stand approved. Mr. Manager HOWLAND has the floor.

Mr. Manager HOWLAND resumed and concluded the speech begun by him yesterday. The entire speech is as follows:

ARGUMENT OF MR. HOWLAND, ONE OF THE MANAGERS ON THE PART OF THE HOUSE.

Mr. Manager HOWLAND. Mr. President, I shall proceed immediately to submit for the consideration of the Senate certain propositions of law. The questions of fact will be discussed by my colleagues.

The managers contend that the power to impeach is properly invoked to remove a Federal judge whenever, by reason of misbehavior, misconduct, malconduct, or maladministration, the judge has demonstrated his unfitness to continue in office; that misbehavior on the part of a Federal judge is a violation of the Constitution, which is the supreme law of the land, and a violation also of his oath of office taken in compliance with the requirements of the statute law. If the Senate should adopt this view of the law, then the only question to be passed on by the Senate would be whether the acts alleged and proven constitute such misbehavior as to render the respondent unfit to continue in office.

In supporting our view of the law I shall *first* call attention to the issue of law directly raised by the pleadings; *second*, to the proper construction to be placed upon certain sections of the Constitution; and, *third*, to the precedents, both State and Federal.

The respondent, in answer to each one of the articles of impeachment filed against him in paragraph 1 thereof, uses the following language:

> That the said article does not set forth anything which, if true, constitutes an impeachable offense or a high crime or misdemeanor as defined in the Constitution of the United States, and that, therefore, the Senate sitting as a Court of Impeachment should not further entertain the charge contained in said article.

It will be noticed that in the first paragraph of his several answers to the various counts the respondent has really interposed what may properly be designated as a general demurrer to each and every article presented against him, and that by paragraph 2 of the answer to each article the respondent pleads by way of confession and avoidance, substantially admitting the acts charged and attempting to avoid by denying wrongful intent.

The replication interposed by the managers is a joinder in demurrer and a traverse of the new matter in the plea, so that the record in this case produces an issue of law and an issue of fact to be passed upon by the Senate at the same time. I can only account for this condition of affairs by presuming that counsel for the respondent had very little confidence in the issue of law raised by his general demurrer and therefore did not dare press it for decision before going to trial on the merits.

In the consideration of this case, if the Senate should decide that the demurrer interposed by the respondent ought to be sustained, that would terminate the inquiry, and it would, of course, be unnecessary to pass upon the issue of fact. Under the general allegation of the respondent's demurrer attacking the sufficiency in law of the various articles it was impossible to determine the exact ground upon which the respondent relied. Learned counsel for the respondent, however, in his opening statement to the Senate, which he has since amplified in his brief, used the following language:

> So we mean that what was a crime at the common law may be made impeachable here, and that any laws which Congress has passed since that time, if violated by any civil officer of the Government, judge, or President, or anyone else, may be the subject of impeachment, and that there can be no other impeachable offenses.

In that statement we are advised for the first time of the exact ground upon which counsel for the respondent intends to attack the sufficiency in law of the articles of impeachment, viz, that they charge no indictable offense at common law or under the Federal statutes. He thus raises once more the question which has been discussed in almost every proceeding of this character, whether Federal or State. This contention is entitled to our respectful consideration on account of its age, if for no other reason. Time and time again it has been urged, only to be disregarded by the various courts of impeachment, as we shall show by the authorities cited later.

The learned counsel for the respondent, by interposing his demurrer to the sufficiency of the articles and insisting that only indictable offenses are impeachable, would seem to be placing himself in the position of holding that the object of impeachment was punishment to the individual. This conception of the object of impeachment is entirely erroneous, and whatever injury may result to the individual is purely incidental and not one of the objects of impeachment in any sense. An impeachment proceeding is the exercise of a power which the people delegated to their representatives to protect them from injury at the hands of their own servants and to purify the public service. The sole object of impeachment is to relieve the people in the future, either from the improper discharge of official functions or from the discharge of official functions by an improper person. This view of impeachment is clearly demonstrated by the judgment which the Constitution authorizes in case of conviction and which shall extend no further than removal from office and disqualification to hold or enjoy any office of honor, trust, or profit under the Government of the United States, leaving the punishment of the individual for any crime he may have committed to the criminal court. (See Art. I, sec. 3, par. 7, Constitution of the United States.)

As bearing upon the question of law raised by the demurrer of the respondent I wish to call attention to two provisions of the Federal Constitution. Section 4, Article II, provides:

> The President, Vice President, and all civil officers of the United States shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors—

To which I shall hereafter refer as the removal section, and section 1, Article III, the second sentence thereof, which provides that—

> The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior.

To which I shall hereafter refer as the judicial-tenure section.

It will be noted that the removal section immediately precedes the judicial-tenure section. The limitation of the judicial tenure to good behavior is the only limitation of that character to be found in the Federal Constitution upon the tenure of any of the civil officers of the Government. I therefore contend that it was the plain intention of the framers of the Constitution that, in so far as the Federal judges were concerned, the removal section was not intended to be antagonistic in its terms to the judicial-tenure section, immediately following it, and that the judicial-tenure section, which provides that the judicial term shall be during good behavior, was not intended to be antagonistic to the removal section, which immediately precedes it. These two sections must be construed together, and when so construed the judicial-tenure section is of necessity either an addition to the enumerated offenses in the removal section or a definition of the term "high crimes and misdemeanors," when applied to the judiciary, as including misbehavior. To say that the judicial tenure shall be limited to good behavior in one section of the Federal Constitution and then contend that the section of the Constitution immediately preceding that has destroyed its force and effect and has left the Federal Government without any machinery to pass upon the question of the forfeiture of the judicial tenure, or to take jurisdiction of acts which constitute misbehavior but are not criminal, is to treat the words "during good behavior" as surplusage. Such an interpretation violates all rules of construction.

THE LEGAL STATUS OF THE JUDICIAL TENURE.

What is the legal status of the judicial tenure and what determines that status? There are some considerations on which to base the claim that the legal status of the judicial tenure should be determined by the same principles that are applicable to a contract of hiring. The parties to the contract are the people of the United States and the candidate for a Federal judgeship. When he has been nominated by the President and confirmed by the Senate the commission tendered or delivered to him is an offer on the part of the people of the United States to the candidate, whereby they agree to enter into a contract on certain terms and conditions with the candidate and offer to pay him a fixed sum of money for the performance of certain services for them in accordance with the terms of the offer. No obligation on the part of the Government has yet attached; the candidate need not accept the offer; he is not compelled to qualify; that is a voluntary act on his part. (See Marberry *v.* Madison, 1 Cranch, 137.)

Section 257 of the judicial code provides that the Federal judges shall take a certain prescribed oath before they proceed to perform the duties of their respective offices.

The acceptance of the offer on the part of the candidate is evidenced by his oath, and when the oath is taken the contract of hiring becomes valid and binding on the parties to the same in accordance with the terms and conditions of the contract.

In this case the contracts between the United States and the respondent are evidenced by the various commissions and the various oaths accepting the same. The contract between the United States and the respondent as a circuit judge is evidenced by the commission bearing date the 31st day of January, 1911, in the words and figures following, to wit:

To all who shall see these presents, greeting:

Know ye that reposing special trust and confidence in the wisdom, uprightness, and learning of Robert Wodrow Archbald, of Pennsylvania, I have nominated and, by and with the advice and consent of the Senate, do appoint him additional circuit judge of the United States from the third judicial circuit, and do authorize and empower him to execute and fulfill the duties of that office according to the Constitution and laws of the said United States, and to have and to hold the said office, with all the powers, privileges, and emoluments to the same of right appertaining unto him, the said Robert Wodrow Archbald, *during his good behavior.* Appointed pursuant to the act of June 18, 1910 (36 Stats., 540), and hereby designated to serve for four years in the Commerce Court.

In testimony whereof I have caused these letters to be made patent and the seal of the Department of Justice to be hereunto affixed.

Given under my hand, at the city of Washington, the 31st day of January, A. D. 1911, and of the independence of the United States of America the one hundred and thirty-fifth.

[SEAL.] WM. H. TAFT.

By the President:
GEORGE W. WICKERSHAM,
Attorney General.

The oath of office bears date the 1st day of February, 1911, in the words and figures following, to wit:

I, Robert Wodrow Archbald, do solemnly swear that I will administer justice without respect to persons and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent on me as additional circuit judge of the United States from the third judicial circuit, appointed pursuant to the act of June 18, 1910 (36 Stats., 540), and designated to serve for four years in the Commerce Court, according to the best of my abilities and understanding, *agreeably to the Constitution and laws of the United States;* and that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

R. W. ARCHBALD.

Subscribed and sworn to before me this 1st day of February, 1911.
[SEAL.] E. R. W. SEARLE,
Clerk District Court.

Under this state of facts, if we were not dealing with the Government as one of the parties to the contract, under constitutional limitations the contract could be abrogated for breach of condition if necessary and the rights of the parties determined in the courts of law.

If it should be objected that the legal status of the judicial tenure must be placed on a higher ground than an ordinary contract right by reason of the solemnities necessary to create the status and by reason of the important and sacred functions of government with which the judge is charged, we perhaps would be justified in saying that a fiduciary relation of the highest and most sacred character known to the law is created by the commission of appointment and the oath of acceptance of a Federal judge. Under this conception of the status of the judicial tenure the judge is acting as a trustee. The subject matter of the trust is the judicial power of the United States, and the beneficiaries of the trust are the people thereof. Given this status in a court of equity, the trustee, under well-known and well-recognized principles of equitable jurisprudence, can always be removed on application of the beneficiary and a showing that the trustee is not performing his duties as such trustee in such a manner as to satisfy the conscience of the chancellor that he is acting for the best interest of the beneficiary. Realizing, however, the manifest impropriety of leaving the question of forfeiting the judicial tenure to the judges, the framers of the Constitution wisely provided a different forum, viz, the Congress to raise and try the question of the forfeiture. We have now seen that whether we apply principles of law or equity to the status created by the appointment of the Federal judge there would be a forum to adjudicate the rights of the parties, and reasoning by analogy we are driven to the conclusion that the framers of the Constitution were not unmindful of the importance of the subject with which they were dealing, and intended to and did provide a forum before which the people of the United States could bring their judges and on proper showing of misbehavior, which demonstrates the unfitness of the judge to continue in office, work a forfeiture of the judicial tenure.

HIGH CRIMES AND MISDEMEANORS.

In the removal section of the Constitution we find the words "high crimes and misdemeanors." These words are used in the same sense that had attached to them for centuries in the impeachment trials of England. They were used as part of the well-recognized terminology of the law of Parliament as distinguished from the common law. We must bear in mind that these terms are used in a section of the Constitution which is plainly intended to protect the state against its own servants.

The two enumerated offenses of treason and bribery are offenses peculiarly against the state as distinguished from offenses against the individual. In construing a clause of this character in the Constitution where the whole object is to protect and preserve the Government, such a construction should be placed upon the language used as will best accomplish the results desired. To insist that the technical definition of the criminal law should be applied in construing the meaning of the terms "high crimes and misdemeanors" is to insist on the narrowest possible construction, and loses sight of the object and purpose of this clause in the Constitution. To insist that it is impossible to impeach a judge unless he has committed some indictable offense is to say that the people of this country are powerless to remove a Federal judge so long as he is able to keep out of jail. While no criminal is fit to exercise the judicial function, it does not follow that all other persons are fit to be judges. Such a construction is absolutely repulsive to reason and ought not to be and is not a correct interpretation of the term "high crimes and misdemeanors."

Attention is often called to the discussion that took place in the Constitutional Convention between Col. Mason and Mr. Madison in which Mr. Madison suggested that the term "maladministration" was too vague and the phrase "high crimes and misdemeanors" was adopted. Attention was called to that by the distinguished counsel for the respondent in his opening statement.

On the strength of this passage in Madison's papers it is contended that Mr. Madison did not construe the phrase "high crimes and misdemeanors" as including maladministration. (3 Madison's Papers, 1528.)

We find, however, that Mr. Madison in a speech in Congress on the 16th day of June, 1789, on the bill to establish a department of foreign affairs, in discussing the possibility of abuse of power by the Executive, said:

Perhaps the great danger of abuse in the Executive's power lies in the improper continuance of bad men in office. But the power we contend for will not enable him to do this, for if an unworthy man be continued in office by an unworthy President the House of Representatives can at any time impeach him and the Senate can remove him, whether the President chooses or not. The danger then consists merely in this: The President can displace from office a man whose merits require that he should be continued in it. What will be the motives which the President can feel for such abuse of his power and the restraints that operate to prevent it? In the first place, he will be impeachable by the House before the Senate for such an act of *maladministration,* for I contend that the wanton removal of meritorious officers would subject him to impeachment and removal from his own high trust. (4 Elliot's Debates, 375.)

This language clearly demonstrates that Mr. Madison believed that acts of maladministration which were not indictable were impeachable.

Nowhere in the English law of impeachment or in the Constitution of the United States or any of the States do we find any definition of impeachable offenses. The language of the Federal Constitution attempts no definition of impeachable offenses, and the general term "high crimes and misdemeanors" is not and was not intended to be a definition.

Under the State constitutions we sometimes find the added terms "mal and corrupt conduct," "corruption in office," and "maladministration," all general terms without attempting any technical definition. The reason for this is perfectly obvious, and is that the subject matter is not capable of technical definition. Who is wise enough to anticipate every manifestation of fraud that would give a chancellor jurisdiction and write it into a statute? It is the effect of acts under the circumstances of each particular case that confers jurisdiction. So it is with impeachments. No one can tell in advance in what way or from what source the danger may arise which demands the exercise of this power. The power of impeachment is recognized and authorized in every one of our constitutions, Federal and State, but the circumstances which warrant the exercise of that power are not defined and the necessity for its exercise is in the first instance left to the discretion of the House of Representatives. It is an indefinite and broad power incident to sovereignty, and its exercise in this country is demanded whenever the agents of sovereignty have acted in such a manner as to destroy their efficiency in the discharge of their duties to the sovereign. The existence of this power is necessary to the permanence of the State, and the exercise of the power is necessary whenever and however the welfare of the State may be threatened by its civil officers.

I wish at this point to submit for the consideration of the Senate the record in certain State trials of impeachments, with particular reference to their holdings on the question of whether the acts of a judge must be indictable to be impeachable, and then to make a very brief reference to the trials before the Senate of the United States.

IN THE MATTER OF THE IMPEACHMENT OF ALEXANDER ADDISON, ESQ., PRESIDENT OF THE COURT OF COMMON PLEAS IN THE CIRCUIT CONSISTING OF WESTMORELAND, FAYETTE, WASHINGTON, AND ALLEGHENY COUNTIES, IN THE STATE OF PENNSYLVANIA, ON AN IMPEACHMENT BY THE HOUSE OF REPRESENTATIVES BEFORE THE SENATE IN THE YEAR 1803.

The constitution of the State of Pennsylvania of 1790 governed this proceeding, and section 3 of article 4 of said constitution is the impeachment section thereof and provides that all civil officers of the Commonwealth shall be liable to impeachment for any misdemeanor in office.

Section 2 of article 5 of that constitution provides that judges shall hold their offices during good behavior, but for any reasonable cause which shall not be sufficient ground of impeachment the governor may remove any of them on the address of two-thirds of each branch of the legislature.

In the year 1801 the attorney general of the State of Pennsylvania filed a motion in the supreme court of the State asking leave to file an information against Judge Addison, on the ground of misbehavior on the same state of facts as subsequently alleged in the articles. The supreme court refused to grant the motion because the affidavit did not charge a crime and intimated that there was another remedy applicable to that state of facts. And thereafter the house of representatives preferred articles of impeachment against Judge Addison, alleging that he had obstructed the free, impartial, and due administration of justice, contrary to the public rights and interests of the Commonwealth. (See Addison's trial, pp. 16–69, 151–154.)

The charge, in substance, amounted to a usurpation of power in preventing an associate judge from addressing the grand jury.

The plea interposed by Judge Addison was not guilty.

Mr. Dallas appeared for the managers, and Judge Addison conducted his own defense, and strenuously insisted that the allegations in the articles of impeachment did not charge an indictable offense, which was true.

He was, however, convicted by a vote of 20 to 4. The sentence was that Alexander Addison, president of the several courts of common pleas in the fifth district of this State, shall be, and he is hereby, removed from his office of president aforesaid, and also is disqualified to hold and exercise the office of judge in any court of law within the Commonwealth of Pennsylvania.

IN THE MATTER OF THE IMPEACHMENT PROCEEDINGS OF EDWARD SHIPPEN, CHIEF JUSTICE, JASPER YEATES AND THOMAS SMITH, ASSOCIATE JUSTICES, OF THE SUPREME COURT OF PENNSYLVANIA, ON AN IMPEACHMENT BEFORE THE SENATE OF THE COMMONWEALTH, 1805.

Articles of impeachment were presented against these judges of the supreme court, because they adjudged Thomas Passmore guilty of a contempt of court and sent him to jail for 30 days and fined him $50.

It would seem to be clear that the act charged against the judges was not an indictable offense, and yet this question was not even raised by distinguished counsel for the judges, the chief of whom was that great lawyer, Mr. Dallas.

The judges were acquitted on the merits.

IN THE MATTER OF THE PROCEEDINGS OF THE SENATE AND HOUSE OF REPRESENTATIVES OF THE COMMONWEALTH OF MASSACHUSETTS RELATIVE TO THE IMPEACHMENT OF JAMES PRESCOTT, JUDGE OF PROBATE OF THE COUNTY OF MIDDLESEX, 1821.

This proceeding was had under the constitution of 1780. Article 8 of section 2, chapter 1, authorized the senate to hear and determine all impeachments made by the house of representatives against any officer of the Commonwealth for misconduct and maladministration in their offices. The constitution also provides that all judicial officers shall hold their offices during good behavior, and also provides for removal by the governor, with consent of the council, upon the address of both houses of the legislature.

Under this constitution it would seem that a majority vote was sufficient to convict.

February 5, 1821, the house presented 15 articles of impeachment at the bar of the senate. Article 3 charged that Judge Prescott held court at his law office and not in any probate court and granted letters of administration and warrants of appraisal for property and collected greater fees than the law allowed.

Article 12 charged the judge with advising a guardian and collecting a fee of $5 therefor, and allowing the charge in the account of the guardian as a proper charge against the estate for attorney fees.

From the answer of the respondent it appears that the difficulty arose out of a dispute as to the right to collect fees for certain services.

I feel justified in calling this case to the attention of the Senate because of the fact that Daniel Webster appeared for the respondent and Lemuel Shaw appeared as one of the managers on the part of the house. Of course, neither one of the acts alleged in these counts was indictable.

It was contended by Mr. Webster that the charge must be the breach of some known and standing law, the violation of some *positive* duty, and the power to impeach for other than indictable offenses was thoroughly discussed. Mr. Lemuel Shaw, in supporting the articles, said:

Some difference of opinion may arise as to the true construction and effect of these words "misconduct and maladministration in office" as they stand in the constitution, proceeding probably from the ambiguity and want of technical precision in the words themselves and probably from their connection with the other words in the same paragraph. The latter clause provides that the parties so convicted on impeachment shall be, nevertheless, liable to indictment, trial, judgment, and conviction according to the laws of the land. Perhaps the most reasonable construction of these provisions in the constitution taken together is that proceedings by impeachment and by indictment are had alio intuitu, designed and intended for distinct purposes, the one to punish the officer and the other the citizen. It is obvious that a person in official station is bound in common with all other citizens to obey the laws of the land, and is answerable to the ordinary tribunals for any violation of them. But the constitution establishes a broad and marked distinction between official delinquencies and offenses against social duty. Criminal acts, therefore, may be committed by an officer of such a nature as to render him liable to indictment and punishment in the courts of justice and at the same time being an obvious violation of his official duty and may render him liable to impeachment. Again, other acts may be supposed which, as breaches of the laws, would render an officer liable to indictment and punishment, but which do not in any way affect his official character and duty and would not render him liable to impeachment. The position is equally sound that acts may be committed by a public officer in direct violation of his official duty which would amount to misconduct and maladministration in office within the intent of the constitution, and which would consequently render the officer liable to impeachment, and of such a nature that the ordinary tribunals would not take notice of and punish them in their usual course of procedure and according to the laws of the land, for which, therefore, the offender would not be indictable. If this construction be true, an act may be punished both by indictment and impeachment, or the one or the other exclusively, according to its nature and circumstances.

Judge Prescott was found guilty on article 3 by a vote of 16 to 9, and on article 12 by a vote of 19 to 6, and was removed from office. (See Prescott's trial, pp. 7, 165, 180.)

Mr. Manager HOWLAND, continuing his argument, said:

Last evening I was addressing myself to the proposition that indictability was not a condition precedent to impeachability, and I had called the attention of the Senate to two leading State cases—that of Judge Alexander Addison in Pennsylvania in 1803 and that of Judge James Prescott in Massachusetts in 1821. Continuing the citation of precedents in support of the proposition laid down I now call the attention of the Senate to the case of Judge George G. Barnard, justice of the Supreme Court of the State of New York in 1872.

IN THE MATTER OF THE IMPEACHMENT OF GEORGE G. BARNARD, JUSTICE OF THE SUPREME COURT OF THE STATE OF NEW YORK, 1872.

In connection with this case I want to call the attention of the Senate to the fact that under the constitution of New York the judges of the court of appeals sat as members of the impeachment court together with the senate.

Judge George G. Barnard, justice of the Supreme Court of the State of New York, was impeached by the house of representatives, who presented 38 articles of impeachment, and the thirty-seventh article contained 15 specifications thereunder.

The allegations in the various counts are all charged as mal and corrupt conduct, and several of the counts extend or relate to transactions occurring during a previous term of office, to which counts the respondent interposed a plea to the jurisdiction, claiming that he could not be held accountable in this proceeding for acts done during the previous term. The court, however, overruled his plea by a vote of 23 to 9, holding that he could be held as a matter of law for acts done during a previous term.

A careful review of the acts alleged as mal and corrupt conduct in this case will disclose that none of the allegations would sustain an indictment.

I am unable to find in the constitution of 1846 and the amendments thereto in force at the time of this trial any enumeration of the grounds for the impeachment of judges. The constitution of 1821, article 5, section 2, provided that the assembly should have power of impeaching all civil officers of the State for mal and corrupt conduct in office and for high crimes and misdemeanors. I take it, however, that the adoption of the constitution of 1846 absolutely abrogated the constitution of 1821, so that in the Barnard trial, while they used the language of the constitution of 1821 and charged mal and corrupt conduct in office, that language has no constitutional force and effect in the proceedings and was simply descriptive of those acts which the house of representatives believed to be impeachable.

The same old question of power to impeach for other than indictable offenses was argued very thoroughly. Mr. Van Cott in presenting the case for the managers, on page 243 of volume 1, makes a statement of the test which should be applied in the proceeding, and which was subsequently applied in my judgment by the court.

Now, I have stated some of the general principles applicable to this case. I have stated a few of the orders, and it is now for this court, sitting, to define judicial good behavior and judicial bad behavior; to make the precedent which shall govern in all the future and make our future clear or make it anything but clear to us; to say that the conduct of the judge in these cases is lawful conduct, is good behavior, and sanction it as a safe and lawful precedent, or whether the court will condemn it and will say that there shall not be infused into the civilization and into the judicature of this State the morals of the Barbary coast and of the Spanish Main, for these proceedings were as mere buccaneering and lawless expeditions against persons and property as were ever pursued by pirates upon the high seas.

I would like particularly to call the attention of the Senate to article 37 and the specifications thereunder, which charges respondent with deporting himself in a manner unseemly and indecorous, using language coarse, obscene, and indecent, and using the process of the court to aid and benefit his friends and favoring suitors and counsel, and treating counsel in a coarse, indecent, arbitrary, tyrannical manner, and was guilty of conduct unbecoming the high position which he held, tending to bring the administration of justice into contempt and disgrace. These general allegations are laid more definitely in the specifications which follow.

It is perfectly apparent from the reading of these allegations that no indictable offense is charged, yet the court, by a vote of 24 to 11, found the respondent guilty under the thirty-seventh article.

IN THE MATTER OF THE IMPEACHMENT OF SHERMAN PAGE, A JUDGE OF THE DISTRICT COURT IN AND FOR THE COUNTY OF MOWER, STATE OF MINNESOTA, 1878.

Ten articles of impeachment were presented by the house of representatives and tried before the senate, charging malicious, arbitrary, and tyrannical use of power, and citing specific instances of the same.

Under the constitution of Minnesota judges were impeachable for corrupt conduct in office or for crimes and misdemeanors.

Article 5 charged that the said Sherman Page needlessly, maliciously, and unlawfully, with intent thereby to foment disturbance among the inhabitants of said county of Mower, and with further intent to insult and humiliate one George Baird, then sheriff of said county, issued two orders or commands to the sheriff, in substance directing him to quell riots and preserve the peace, and threatening him in case he disobeyed.

On June 5, 1878, Hon. Cushman K. Davis, counsel for the respondent, moved to quash article 5, saying:

The senate will perceive that we provided in the first sentence of our answer to article 5 that the article is insufficient in law of itself and charges no crime. For those reasons, whether a motion to quash be designated in that way or whether it is bringing a demurrer to the sufficiency of that article or whether it is a demurrer to proof is immaterial. I ask that this article may be dismissed from the consideration of the senate and from our own. (See Page trial, p. 623, 1st vol.)

The question being taken on the motion to quash, it was defeated by a vote of 21 to 15, and by that action of the senate was held good in law, although it did not charge a crime.

On the merits of the case judgment of acquittal was entered.

IN THE MATTER OF THE IMPEACHMENT OF THE HON. E. ST. JULIEN COX, JUDGE OF THE NINTH JUDICIAL DISTRICT OF MINNESOTA, BEFORE THE SENATE OF MINNESOTA AS A HIGH COURT OF IMPEACHMENT, 1882.

The constitution of Minnesota provided for the impeachment of judges for corrupt conduct in office or high crimes and misdemeanors in office. The house of representatives preferred a long list of articles of impeachment, charging specific instances of intoxication and averring that the use of intoxicating liquors had rendered the judge incompetent and unable to discharge the duties of said office with decency and decorum, faithfully and impartially, to the great disgrace of the administration of public justice, and so forth, by reason whereof he was guilty of misbehavior in office and of crimes and misdemeanors in office.

It will be noted that the acts alleged are not charged in the exact language of the constitution, but the allegation is that the respondent was guilty of misbehavior in office and of crimes and misdemeanors rather than of corrupt conduct in office and of crimes and misdemeanors, which is the language of the Minnesota constitution. To these articles of impeachment the respondent interposed a demurrer attacking their sufficiency in law. This demurrer was overruled to all of the articles except to article 19, which was sustained.

The respondent thereafter pleaded to the merits, and trial was had and he was found guilty of misbehavior in office and of crimes and misdemeanors in office on seven of the articles, and was removed from the office of district judge of the State of Minnesota and disqualified for and during the full period of three years to hold the office of judge of the district court of the State of Minnesota and of all other judicial offices of honor, trust, or profit in the State for the period of three years from the date of the judgment.

At the time of these proceedings drunkenness was not an indictable offense in the State of Minnesota, although there has since been passed a law making drunkenness an indictable offense.

IMPEACHMENT TRIALS IN THE UNITED STATES SENATE.

IN THE MATTER OF THE IMPEACHMENT OF SENATOR WILLIAM BLOUNT.

Coming now to the impeachment trials before the Senate of the United States, the first case is that of Senator William Blount, in 1799, who was impeached for high crimes and misdemeanors, but the acts charged were not indictable. The case turned on the question of whether or not a Senator was a civil officer of the United States, but the power of impeachment was ably discussed in the argument.

Mr. Jared Ingersoll, of counsel for the respondent and who was a member of the Constitutional Convention from Pennsylvania, in discussing the removal section of the Constitution, said (U. S. Annals of Congress, vol. 8, p. 2286, 5th Cong.):

I add that I conceive that proceedings by impeachment are restricted not only to civil officers, but that the only causes cognizable in this mode of proceeding are malconduct in office.

And again, on page 2288, he said:

My argument is that what in England is said to be the most proper and has been the most usual in this particular is, by the Constitution of the United States, the exclusive grant of proceeding by impeachment. At least that none but civil officers of the United States are liable to be thus proceeded against. I do not say that the power is limited to malconduct in office.

I also insert here one paragraph from the plea drawn by Mr. Ingersoll and Mr. Dallas—

that although true it is that he, the said William Blount, was a Senator of the United States from the State of Tennessee at the several periods in the said articles of impeachment referred to; yet that he, the said William, is not now a Senator and is not nor was at the several periods so as aforesaid referred to an officer of the United States; nor is he, the said William, in any of said articles charged with having committed any crime or misdemeanor in the execution of any civil office held under the United States or with any malconduct in civil office or abuse of any public trust in the execution thereof. (U. S. Annots., 8th v., p. 2247.)

These quotations show that Mr. Ingersoll believed that malconduct in office was impeachable without reference to the indictability of the act.

Mr. Harper, who later defended Judge Chase, was one of the managers. In closing the argument in the Blount case, he said (p. 2316):

It seems to me, on the contrary, that the power of impeachment has two objects: First, to remove persons whose misconduct may have rendered them unworthy of retaining their offices, and, secondly, to punish those offenses of a mere political nature which, though not susceptible of that exact definition whereby they might be brought within the sphere of ordinary tribunals, are yet very dangerous to the public. These offenses, in the English law and in our constitutions, which have borrowed its phraseology, are called "high crimes and misdemeanors."

As bearing upon the meaning of the term "high crimes and misdemeanors," it might be interesting to note that in the Senate on the 8th of July, 1797, as a result of the proceedings previously held to expel Blount for the offenses for which he was subsequently impeached by the House, it was resolved:

That William Blount, Esq., one of the Senators of the United States, having been guilty of a high misdemeanor entirely inconsistent with his public trust and duty as a Senator, be, and he hereby is, expelled from the Senate of the United States. (Wharton's State Trials, p. 202.)

This quotation from the proceedings in the Senate shows the sense in which the term "high misdemeanor" was used by the Senate in its resolution of expulsion and is a precedent clearly in point on the proposition that the word "misdemeanor" as used in parliamentary proceedings does not necessarily refer to indictable offenses.

IN THE MATTER OF THE IMPEACHMENT OF JUDGE PICKERING.

The next impeachment proceeding is that of Judge Pickering, Federal judge in 1803.

He was impeached for refusing to allow an appeal in a certain matter and for drunkenness. He did not appear in person, but his son asked leave to file an answer in which he claimed that his father was insane, and certain affidavits were presented to substantiate this claim. He was found guilty on all the counts and removed from office. It certainly can not be claimed that drunkenness was an indictable offense, and yet, much to my surprise, I find in the brief of counsel in the case at bar that they attempt to make that claim. I submit that matter, however, to the judgment of the Senate. It is the first time I have ever heard that comment made on the Pickering case, with the possible exception of Mr. Harper in the Chase case, who qualifies it very materially. If it should be contended that Pickering was im-

peached on account of his insanity, it certainly would not be contended that insanity was an indictable offense. If it is held that this case was decided on the proof that Pickering was insane, then the case is an authority for the position that the proof of motive is not essential to a conviction under an impeachment charge.

IN THE MATTER OF THE IMPEACHMENT OF JUDGE CHASE.

The next case is that of Samuel Chase, Associate Justice of the Supreme Court, 1805.

The articles charged injustice, partiality, arbitrary power, rude and contemptuous conduct, and so forth.

None of the acts charged were indictable, and Judge Chase contended that he could not be impeached for offenses not indictable. Counsel for the judge did not go to this extent, and practically abandoned the contention, and the judge was acquitted on the merits.

Mr. Robert G. Harper, in closing the argument for Judge Chase, said (Hinds' Precedents, vol. 3, pp. 766–767):

The honorable gentleman who opened the case on the part of the prosecution cited the case of habitual drunkenness and profane swearing on the part of the judge as an instance of an offense not indictable and yet punishable by impeachment. But I deny his position. Habitual drunkenness in a judge and profane swearing in any person are indictable offenses. And if they were not, still they are violations of the law. I do not mean to say that there is a statute against drunkenness and profane swearing. But they are offenses against good morals, and as such are forbidden by the common law. They are offenses in the sight of God and man, definitive in their nature, capable of precise proof, and a clear defense.

In concluding a short discussion of the Pickering case, Mr. Harper said:

This case therefore proves nothing further than that habitual drunkenness is an impeachable offense.

In concluding a discussion of the Addison case, Mr. Harper said:

But I am free to declare that if Judge Addison's colleague did possess those rights, and if he did arbitrarily prevent and impede the exercise of them by an unconstitutional exertion of the powers of his office, he was guilty of an offense for which he might properly be impeached, because he must in that case have acted in express violation of the constitutions and laws.

In the foregoing statements Mr. Harper takes the position that offenses against good morals, habitual drunkenness, usurpation of power, are impeachable offenses, and in so doing clearly abandons the position that indictability is a condition precedent to impeachability.

IN THE MATTER OF THE IMPEACHMENT OF JUDGE PECK.

The fourth case was that of James H. Peck, a United States judge, in 1830.

He was impeached for "high misdemeanors in office," for imprisoning a lawyer for contempt of court.

His answer conceded the liability to impeachment on facts which would not be indictable in the following words (par. 3, p. 62, Peck's Trial):

If the court erred in adjudging and punishing it as a contempt, was it an innocent error of judgment on the part of the court or was it a high misdemeanor, because willfully and knowingly done in violation of law and with the intention imputed by the article of impeachment, to wit, wrongfully, arbitrarily, and unjustly to oppress, imprison, and otherwise injure the said Luke E. Lawless under color of law?

This respondent presumes that it is only by making good the affirmative of the last proposition that the impeachment against him can be sustained.

Clearly admitting that indictability is not a condition precedent to impeachability.

IN THE MATTER OF THE IMPEACHMENT OF JUDGE HUMPHREYS.

The fifth case was that of West H. Humphreys, a Federal judge, in 1862.

Humphreys was charged with making secession speeches, and in two of the seven articles was charged with treason.

Making secession speeches was not an indictable offense, and the Senate voted separately and found him guilty on each article, so that this case is an authority that indictability is not a necessary element to sustain impeachment.

IMPEACHMENT OF PRESIDENT JOHNSON.

In the impeachment trial of Andrew Johnson he was charged with sundry and divers acts, several of them alleging that he had violated the provisions of the law known as the "tenure of office act," and which under the terms of the act probably constituted an indictable offense.

The celebrated swing-around-the-circle article, charging him with making incendiary speeches, of course did not charge an indictable offense, but the Senate in the consideration of the various articles did not come to a vote upon this particular article, for after they had voted on three articles the Senate adjourned without day.

In this connection I wish to quote a few sentences from the argument of Mr. Thaddeus Stevens in closing the debate in the House on the resolution impeaching President Johnson (Globe, p. 1399):

Impeachment under our Constitution is very different from impeachment under the English law. The framers of our Constitution did not rely for safety upon the avenging dagger of a Brutus, but provided peaceful remedies which should prevent that necessity. England had two systems of jurisprudence—one for the trial and punishment of common offenders, and one for the trial of men in higher stations, whom it was found difficult to convict before the ordinary tribunals. The latter proceeding was by impeachment or by bills of attainder, generally practiced to punish official malefactors; but the system soon degenerated into political and personal persecution, and men were tried, condemned, and executed by this court from malignant motives. Such was the condition of the English laws when our Constitution was framed, and the convention determined to provide against the abuse of that high power so that revenge and punishment should not be inflicted upon political or personal enemies. Here the whole punishment was made to consist in removal from office, and bills of attainder were wholly prohibited. We are to treat this question, then, as wholly political, in which if an officer of the Government abuse his trust or attempt to pervert it to improper purposes, whatever might be his motives, he becomes subject to the impeachment and removal from office. The offense being indictable does not prevent impeachment, but is not necessary to sustain it.

I will also quote from the opinion of the Hon. George F. Edmunds in the trial of Andrew Johnson, Supplement Congressional Globe, page 428:

In my opinion this high tribunal is the sole and exclusive judge of its own jurisdiction in such cases, and that, as the Constitution did not establish this procedure for the punishment of crime, but for the secure and faithful administration of the law, it was not intended to cramp it by any specific definition of high crimes and misdemeanors, but to leave each case to be defined by law, or, when not defined, to be decided upon its own circumstances in the patriotic and judicial good sense of the Representatives of the States. Like the jurisdiction of chancery in cases of fraud, it ought not to be limited in advance, but kept open as a great bulwark for the preservation of purity and fidelity in the administration of affairs, when undermined by the cunning and corrupt practices of low offenders or assailed by bold and high-handed usurpation or defiance, a shield for the honest and law-abiding official, a sword to those who pervert or abuse their powers, teaching the maxim which rulers endowed with the spirit of a Trojan can listen to without emotion, that "kings may be cashiered for misconduct."

IN THE MATTER OF THE IMPEACHMENT OF WM. W. BELKNAP, SECRETARY OF WAR.

This case has no bearing on the propositon of law under discussion, but is clearly an authority that the Senate will hold jurisdiction to try an ex-civil officer who is a private citizen for acts done in office. The fact that jurisdiction is determined by a majority, and conviction requires two-thirds is important only in so far as the jurisdictional question might affect the final vote on the merits. Applying the precedent established by the Belknap case to the case at bar, if the Senate has jurisdiction to try a private citizen for acts done when in office, it certainly has jurisdiction to try a circuit judge for acts done as district judge where there has been continuity of service of the same character.

IN THE MATTER OF THE IMPEACHMENT OF JUDGE SWAYNE.

In this case an elaborate brief was filed which, though signed by counsel for the respondent, was most carefully and politely disowned by them. (Hinds III, p. 454.) It was contended in the brief that indictability was a condition precedent to impeachabilty—a position which was not urged by counsel for the respondent at the trial. I am glad to be able to quote from the brief of counsel in the pending trial to substantiate the claim that in the Swayne case the proposition that indictability was a condition precedent to impeachability was entirely abandoned. (Respondent's brief, p. 39.)

On reading the proceedings in that trial (Swayne) we are unable to find that counsel for Swayne discussed at all the question whether it was necessary for the conviction of their client that it should be charged and proven that he had committed an indictable offense.

Mr. President, we have shown that the doctrine that indictability is a condition precedent to impeachability finds no constitutional warrant to sustain it, is antagonistic to any proper conception of the object and purpose of impeachment, and is absolutely repudiated by an unbroken line of precedents, both State and Federal. We therefore conclude that the power to impeach is properly invoked to remove a Federal judge whenever, by reason of misbehavior, misconduct, malconduct, or maladministration, the judge has demonstrated his unfitness to continue in office, and with confidence in the correctness of our judgment we await the decision of the Senate.

ARGUMENT OF MR. NORRIS, ONE OF THE MANAGERS ON THE PART OF THE HOUSE.

Mr. Manager NORRIS. Mr. President, I shall not weary the Senate with any further discussion of the facts as they have been developed in this case. My colleagues who have already addressed the Senate have analyzed and considered the evidence in all of its various phases. I desire, however, to briefly state my views on some of the legal questions of the case that have arisen in this trial.

In some of the articles of impeachment the respondent is charged with misbehavior in office, and it is claimed, as far as these articles are concerned, that he is not guilty of any

offense which would properly be the subject of a prosecution by indictment or information in a criminal court. It is strenuously argued by attorneys for respondent that an impeachment lies only for offenses which are criminal in their nature and which could legally be the subject of prosecution by indictment.

WHAT OFFENSES, PARTICULARLY AS APPLIED TO JUDGES OF THE UNITED STATES COURTS, ARE IMPEACHABLE UNDER THE CONSTITUTION?

The Constitution provides (Art. I, sec. 2) that the House of Representatives shall have the sole power of impeachment, and in section 3 of the same article it is provided that the Senate shall have the sole power to try all impeachments. It is undisputed, and indeed has never been questioned, that to remove a United States judge from office two things are essential: First, he must be impeached by the House of Representatives; and, second, he must be tried and convicted by the Senate upon the articles of impeachment presented by the House. There is no other way provided by the Constitution of the United States for the removal from office of a judge. In the consideration of this subject I shall draw a distinction between a judge of the United States court and all other civil officers of the United States. I shall demonstrate from the Constitution itself that a judge of the United States court can properly be impeached, convicted, and removed from office for any act from treason down to conduct that tends to bring the judiciary into disgrace, disrespect, or disrepute.

Section 4 of Article II of the Constitution reads as follows:

> The President, Vice President, and all civil officers of the United States shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors.

It will be noted that this provision of the Constitution applies to all civil officers of the United States alike. It is undisputed that it includes judges, and were there no other provision of the Constitution applying particularly to the conduct or the tenure of office of judges then there would be no distinction between the impeachment and trial of judges and any other civil officer, including the President and Vice President. But section 1, Article III, so far as the same is applicable to this case, provides:

> The judges, both of the Supreme Court and inferior courts, shall hold their offices during good behavior.

This provision of the Constitution, it will be obverved, applies only and exclusively to judges. It has no relation to any other civil officer of the Government, and if we are not to nullify it entirely we will find that it bears a very important part in the consideration of the particular branch of the case under discussion. I desire the Senate to continually bear in mind and to faithfully observe at all times during the consideration of this subject, that in the construction of any legal document or instrument the court will so construe it as to give life and vitality to every part of the instrument, if it can reasonably and logically do so. It is our duty to construe these two provisions of the Constitution together, and, if possible, to give equal vitality and life to them both.

Most of the civil officers provided for by the Constitution have a definite fixed term, but the judges hold office during good behavior. Much of the contention arises over what is meant in section 4, Article II, by the word "misdemeanor." It is contended by the respondent that this word is intended only to apply to such offenses as are indictable and punishable under the criminal law, and that a judge can not be impeached and removed from office unless his offense, whatever it may be called, is at least of so high a degree as to make it criminal and indictable. This construction, if adhered to, absolutely nullifies that provision of section 1, Article III, above quoted, which provides that judges shall hold their offices during good behavior. If judges can hold their offices only during good behavior, then it necessarily and logically follows that they can not hold their offices when they have been convicted of any behavior that is not good. If good behavior is an essential to holding the office, then misbehavior is a sufficient reason for removal from office. And if, therefore, we give full life and vitality to both of these provisions of the Constitution, we must hold that the lack of good behavior, or misbehavior, mentioned in section 1, Article III, is synonymous with the word "misdemeanor" in section 4, Article II, in all cases where the offense is less in magnitude than an indictable one.

This view of these provisions of the Constitution has been sustained by practically all of the leading law writers upon the subject. It has also been sustained by the Senate in the trial of prior impeachment cases that have taken place. John Randolph Tucker, in his Commentaries on the Constitution (Vol. I, sec. 200), after discussing the question at some length and enumerating many offenses that are impeachable, uses this language:

> But if he decides unconscientiously—if he decides contrary to his honest convictions from corrupt partiality—this can not be good behavior and he is impeachable. Again, if the judge is drunken on the bench, this is ill behavior, for which he is impeachable, and all of these are generally criminal or misdemeanors, for misdemeanor is a synonym of misbehavior. * * * To confine the impeachable offenses to those which are made crimes or misdemeanors by statute or other specific law would too much constrict the jurisdiction to meet the objects proper of the Constitution, which was, by impeachment, to deprive of office those who by act of omission or commission showed great and flagrant disqualification to hold it.

George Ticknor Curtis, in his work on the Constitutional History of the United States (p. 481), in discussing impeachment, uses this language:

> The object of the proceedings is to ascertain whether cause exists for removing a public officer from office. Such a cause may be found in the fact that, either in the discharge of his office or aside from its functions, he has violated a law or committed what is technically denominated a crime. But a cause for removal from office may exist where no offense against positive law has been committed.

Watson, in his work on the Constitution (vol. 2, p. 1034), takes the same position and says that the word "misdemeanor" is the same as "misdeed, misconduct, misbehavior, voluntary transgression." Practically the same position is taken by Foster in his work on the Constitution, in section 93. This position is sustained by a full review of the question in the American and English Encyclopedia of Law, but these cases have already been called to the attention of the Senate. These citations showed that the Senate has in the past found officials guilty where the crime charged was not an indictable offense.

In Black on Constitutional Law, second edition, pages 121 and 122, it is said:

> Treason and bribery are well-defined crimes. But the phrase "other high crimes and misdemeanors" is so very indefinite that practically it is not susceptible of exact definition or limitation, but the power of impeachment may be brought to bear on any offense against the Constitution or the law which, in the judgment of the House, is deserving of punishment by this means or is of such a character as to render the party accused unfit to hold and exercise his office. It is of course primarily directed against official misconduct. Any gross malversation in office, whether or not it is a punishable offense at law, may be made the ground of an impeachment.

Further on the same writer says:

> It will be observed that the power to determine what crimes are impeachable rests very much with Congress; for the House, before preferring articles of impeachment, will decide whether the acts or conduct complained of constitute a "high crime or misdemeanor," and the Senate in trying the case will also have to consider the same question.

EVEN IF WE ADMIT "MISDEMEANORS" AS USED IN SECTION 4, ARTICLE II, APPLIES ONLY TO INDICTABLE OFFENSES, YET A JUDGE CAN BE IMPEACHED FOR MISBEHAVIORS OF A LESS GRADE THAN INDICTABLE OFFENSES UNDER SECTION 1, ARTICLE III.

But suppose, for the sake of argument, it be admitted that "misdemeanors" as used in section 4, Article II, was intended by the framers of the Constitution to exclude all offenses that were not indictable under the law, it would still not necessarily follow that judges could not be impeached and removed from office for misdemeanors of so low a grade that they were not indictable. This section simply provides that all the civil officers of the United States shall be removed from office on impeachment for and conviction of treason, bribery, and other high crimes and misdemeanors. If in any other provision of the Constitution additional reasons for impeachment are given of some of these specified officers, or additional reasons are given why some of them should cease to hold office, then under such provision such specified officers could be tried, impeached, and removed even though the offense of which they might be guilty was not included in any of those enumerated in section 4, Article II.

While I believe the construction placed on "misdemeanors" by the respondent is wrong, yet they have not made a defense to the various charges of misbehavior in office, even if we accept their construction of the law that misdemeanors in this section means only indictable offenses. If, for instance, the President was expressly excluded from the officers named in this section, then I concede there would be no way under the Constitution for him to be impeached, tried, and removed from office, because there is no other provision of the Constitution that provides for any offense on the part of the President or limits his tenure of office excepting the expiration of his regular term. But if judges were expressly eliminated from this section and it read "all civil officers of the United States except judges, and so forth," it would not follow that they could not be impeached, convicted of misbehavior, and removed from office, because section 1, Article III, expressly provides that they shall only hold their offices during good behavior. In other words, our forefathers in framing the Constitution have wisely seen fit to provide for a requisite of holding office on the part of a

judge that does not apply to other civil officers. The reason for this is apparent. The President, Vice President, and other civil officers, except judges, hold their positions for a definite fixed term, and any misbehavior in office on the part of any of them can be rectified by the people or the appointing power when the term of office expires. But the judge has no such tenure of office. He is placed beyond the power of the people or the appointing power, and is therefore subject only to removal for misbehavior. Since he can not be removed unless he be impeached by the House of Representatives, tried and convicted by the Senate, it must necessarily follow that misbehavior in office is an impeachable offense.

Any authority that has been cited by the respondent which shows or tends to show that a President, Vice President, or other civil officer other than a judge can not be impeached except the offense is at least of the grade of a misdemeanor that is indictable does not apply to the impeachment or trial of a United States judge. To hold that an officer whose tenure of office is definite and fixed and who will necessarily go out of office within the course of a year or two should not be impeached and removed from office for a misbehavior that does not reach in magnitude an indictable offense is entirely different from holding that an officer whose term of office ordinarily lasts for life should not be so impeached and removed. And our forefathers evidently had this distinction in mind when they applied exclusively to judges that provision of the Constitution which provides that judges shall hold their offices during good behavior.

If I am not right in my construction of the Constitution, then the Congress and the country are absolutely helpless in any attempt to get relief from a judge who drags the judicial ermine down into disgrace, but is careful in doing so not to commit any criminal offense. If I am not right in my construction, then that provision of the Constitution which says that judges shall hold office during good behavior is absolutely nullified, and as far as the good behavior part of it is concerned it has no vitality, no life, no effect. The judge who secretly arranges with attorneys on one side of a case to make a private argument, who not only makes such arrangement but who initiates it, is guilty of a misbehavior. Every lawyer knows this; every Senator will admit it. Are we helpless in the premises simply because such an act is not indictable under the law? The judge who is continually asking favors of litigants in his court, if he is careful, can not be convicted of any crime; but he is guilty of a misbehavior. No one will dispute it. He is perverting the ends of justice. He is bringing the judiciary into disgrace and into disrepute. Carried to its logical conclusion, such conduct would soon mean that our judicial system would fall. It could not survive. Are we helpless? Must we say that although the Constitution says the judge shall only hold his office during good behavior, that the House of Representatives and the Senate are unable to apply those provisions of the Constitution which provide for impeachment, trial, and removal? If our forefathers meant anything when they provided in the Constitution that the judges should hold their offices during good behavior, they certainly intended that when the judge misbehaved he should be removed from office. Such a construction of the Constitution will not violate any principle of law, but, on the other hand, it will give full effect to a constitutional provision that would otherwise be meaningless and a dead letter. Our forefathers wisely, I think, refrained in the Constitution from giving any definition to "crimes and misdemeanors" and likewise refrained from defining what would be an abuse or a violation of "good behavior." Misbehavior, the opposite of good behavior, and I think the proper appellation of any conduct that is not good behavior, implies innumerable offenses of greater or less magnitude.

As to what is misbehavior in office must be determined in the first place by the House of Representatives when they adopt the articles of impeachment. It must be redetermined by the Senate when, after listening to the evidence, they pass judgment upon the case. I think all will agree that any conduct on the part of a judge which brings the office he holds into disgrace or disrepute, or which results or has a tendency to result in the denial of absolute justice to all persons engaged in litigation in his court, is a misbehavior. Certainly such conduct is not good behavior, and the Constitution provides that he shall only hold office during good behavior. Therefore it follows that in the absence of good behavior on the part of the judge he should be removed from office. It is undoubtedly true that the House of Representatives, in passing upon articles of impeachment and the Senate upon the trial of the offense charged in such articles, where only misbehavior in office was shown, would take into consideration in reaching their conclusions not only the magnitude of such misbehaviors but the frequency of their occurrence. Where the evidence shows that a judge is continually misbehaving by engaging in conduct and practices that bring his office into disrespect and disrepute, the House and the Senate can not avoid their duty or their responsibility by saying that each distinct offense is in itself of small magnitude and not indictable.

An eminent writer on the Constitution has summed up the question in the following forcible and appropriate language:

A civil officer may so behave in public as to bring disgrace upon himself and shame upon his country, and he may continue to do this until his name would become a national stench, and yet he would not be subject to indictment by any law of the United States, but he certainly could be impeached. What will those who advocate the doctrine that impeachment will not lie except for an offense punishable by statute do with the constitutional provision relative to judges which says, "Judges, both of the supreme and inferior courts, shall hold their office during good behavior"? This means that as long as they behave themselves their tenure of office is fixed and they can not be disturbed. But suppose they cease to behave themselves? When the Constitution says "A judge shall hold his office during good behavior," it means that he shall not hold it when it ceases to be good. Suppose he should refuse to sit upon the bench and discharge the duties which the Constitution and the law enjoin upon him, or should become a notoriously corrupt character and live a notoriously corrupt and debauched life? He could not be indicted for such conduct, and he could not be removed except by impeachment. Would it be claimed that impeachment would not be the proper remedy in such a case? (Watson on the Constitution, vol. 2, pp. 1036, 1037.)

CAN A CIRCUIT JUDGE BE IMPEACHED FOR MISBEHAVIOR OCCURRING WHILE HE HELD THE OFFICE OF DISTRICT JUDGE?

In this case some of the articles of impeachment charge the respondent with offenses committed while he held the office of district judge. It will be remembered that the evidence discloses that while the respondent was holding the office of district judge he was appointed circuit judge. He passed directly from one office into the other and no interim lapsed between the time that he held the office of district judge and the time when he became circuit judge, which office he still holds. And the technical defense is made by the respondent that he can not be impeached for any misconduct or misbehavior that occurred while he was holding the office of district judge. The change was in the nature of a promotion, but the nature of his office is practically the same. The Senate will take judicial notice of the fact that at the time the respondent was district judge he had authority and jurisdiction, under the law, to sit as a circuit judge and to hold circuit court. It is a well-known fact that the district judges prior to the adoption of our code practically did all of the work in the circuit courts. Indeed, in this case in most of the particular offenses charged the respondent, although a district judge, was engaged in the function of holding circuit court. The Peale case and the Rissinger case were cases pending not in the district court, but in the circuit court, and the respondent in each case was the presiding judge. I think that the authorities are pratically unanimous that a public official can be impeached for official misconduct occurring while he held a prior office if the duties of that office and the one he holds at the time of the impeachment are practically the same or are of the same nature. The Senate must bear in mind, as stated by all of the authorities, that the principal object of impeachment proceedings is to get rid of an unworthy public official. In the State of New York it was held in the Barnard case that the respondent could be impeached and removed from office during his second term for acts committed during his first term. And in the State of Wisconsin the court held the same way in the impeachment of Judge Hubbell. To the same effect was the decision in Nebraska upon the impeachment trial of Gov. Butler. On this point the respondent relies upon the case of the State *v.* Hill (37 Nebr., p. 80).

In that case the State treasurer of Nebraska was impeached after he had completed his term and retired to private life. The articles of impeachment were not passed on by the legislature, in fact were not even introduced in the legislature until after the respondent had served his full term, and the court there held that impeachment did not lie; but it expressly approved the judgment of the New York court in the Judge Barnard case, the judgment of the Wisconsin court in the Judge Hubbell case, and the prior judgment of the Nebraska court in the Butler case. And the court, in giving its reason, expressly stated that the object of impeachment as defined by the constitution of that State was to remove a corrupt or unworthy officer, and that inasmuch as his term had expired prior to his impeachment he was no longer in office and the object of the constitution had been attained, and therefore impeachment would not lie. In the case at bar the functions of the office held by the respondent as district judge were practically the same as his official functions when he was made circuit judge. They were of the same nature

and would be directly affected by the same misconduct in office. He has held a Federal judgeship continuously during all the time of the commission of all of the alleged offenses.

CONCLUSION.

The House in presenting the articles of impeachment were performing an official duty. The managers on the part of the House have undertaken to carry out the mandate of that body without any malice, without any ill will, but without fear or favor. Like the balance of our fellow citizens, we hold the judiciary in the highest respect. We are anxious that the citizenship generally should have for it unbounded respect and unlimited admiration. We realize that it is only by the confidence that the people have in public officials that the stability of our institutions can be maintained. When public officials disregard their duty and violate the common standards of propriety with impunity, the standard of our citizenship is lowered and the very foundation of our Government is threatened. Of all the departments of government the judiciary is and ought to be held in the highest regard. Our Government can not perform its full destiny unless the courts are above reproach and the judges above suspicion.

It is not for the managers to say what the verdict of the Senate shall be. We have done our best to give you a fair, honest, and impartial presentation of the evidence and the law as we see it and understand it. To the best of our ability we have performed our duty. Our responsibility is about ended, and your greatest responsibility is just before you. That you will perform it without fear, without favor, without prejudice, and render such judgment as you believe to be righteous is our earnest belief and our sincere conviction.

ARGUMENT OF MR. DAVIS, ONE OF THE MANAGERS ON THE PART OF THE HOUSE.

Mr. Manager DAVIS. Mr. President, the issues presented by the case before the Senate, whether of law or fact, would seem to be neither numerous nor complex. After the exhaustive and able discussion which has been had by gentlemen who have already spoken, only the vain could hope to add anything of clarity or adornment to their presentation. I address myself, therefore, to the single purpose of showing into how narrow a compass the issues may be compressed, and shall make my remarks more in the nature of an index than a commentary.

To simplify the argument, let us admit that none of the acts with which the respondent is charged are denounced by any express legislative enactment nor are they punishable as crimes either by statute or at common law; we may go further and, for the sake of argument, concede that none of them, if done by a private individual, would in themselves evince any degree of moral turpitude. Indeed, it is even possible, although difficult, to conceive that in a moment of thoughtlessness, without due reflection upon the restraints of his position or the necessary implication arising from his course, a judge upon the bench might commit certain of the indiscretions here alleged without an intentional surrender of his judicial purity or a deliberate willingness to profit by his exalted station. But when such things are done by an occupant of the bench, and being done are repeated and persisted in, then in the opinion of the body by which these charges are preferred condonation is impossible. A course so continued amounts to gross misbehavior and demonstrates the unfitness of the man guilty of such delinquencies, and by such misconduct he forfeits, as we claim, the condition of his official tenure, which is good behavior. The case, when all is said, comes to this: Does the proof show the respondent unfit to continue in the office which he holds, and, if so, has this court power, by process of impeachment, to remove him?

Quite naturally the latter question comes on first to be examined. When the jurisdiction of the court is challenged or the sufficiency of an indictment is called in question it is useless to investigate the facts until these matters are disposed of. The issue at once narrows itself down to the meaning of the phrase "high crimes and misdemeanors" occurring in Article II, section 4, of the Constitution; and the respondent now renews the oft-repeated contention that this language can be used only with reference to offenses which, either by common law or by some express statute, are indictable as crimes. This same proposition has been so often refuted in the past and has been so conclusively disposed of in the course of this argument that it is difficult to add more. Every canon of construction which can be applied to this clause of the Constitution negatives the position which counsel for the respondent assume. Test it by the context, by contemporary interpretation, by precedent, by the weight of authority, and by that reason which is the life of every law and the answer is always the same.

In the first place, when we read this clause of the Constitution, as we are required to do, in the light of the context of the instrument we are confronted at once by the clause fixing the tenure of judges of the Federal courts during good behavior; and if it be difficult, as counsel for respondent assert, to enlarge the phrase "high crimes and misdemeanors" so as to embrace acts not indictable as crimes, it is certainly far more difficult to restrict "good behavior" to the narrow limits fixed by the criminal law. To say that a judge need take as the guide of his conduct only the statutes and the common law with reference to crimes, and that so long as he remains within their narrow confines he is safe in his position, is to overlook the larger part of the duties of his office and of the restraints and obligations which it imposes upon him. We insist that the prohibitions contained in the criminal law by no means exhaust the judicial decalogue. Usurpation of power, the entering and enforcement of orders beyond his jurisdiction, disregard or disobedience of the rulings of superior tribunals, unblushing and notorious partiality and favoritism, indolence and neglect—all are violations of his official oath, yet none may be indictable. Personal vices, such as intemperance, may incapacitate him without exposing him to criminal punishment. And it is easily possible to go further and imagine such indecencies in dress, in personal habits, in manner and bearing on the bench, such incivility, rudeness, and insolence toward counsel, litigants, or witnesses, such willingness to use his office to serve his personal ends, as to be within reach of no branch of the criminal law, yet calculated with absolute certainty to bring the court into public obloquy and contempt and to seriously affect the administration of justice. Can it be possible that one who has so demonstrated his utter unfitness has not also furnished ample warrant for his impeachment and removal in the public interest?

Stated in its simplest terms, the proposition of counsel is to change the language of the Constitution so that instead of reading that—

the judges both of the Supreme and inferior courts shall hold their offices during good behavior—

It will read that—

the judges both of the Supreme and inferior courts shall hold their offices so long as they are guilty of no indictable crime.

If the latter were the true meaning, is it conceivable that the careful and exact stylists by whom the Constitution was composed would have used an ambiguous term to express it?

But counsel ask, What shall be done with that clause which provides that in case of impeachment—

the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment according to law?

This they insist is a definition by implication, and signifies that the scope of impeachment and indictment is one and the same, although the mode of trial and the penalty to be inflicted may differ. We submit, on the contrary, that this clause instead of being a declaration that impeachment and indictment occupy the same field is a recognition of the fact that the field which they occupy may or may not be identical, and recognizing this fact it merely declares that when the field of impeachment and the field of indictment overlap there shall be no conflict between them, but that the same offense may be proceeded against in either forum or in both.

The light drawn from contemporary speeches and writings confirms the position for which we contend. It is true, as counsel will point out, that in the Constitutional Convention when the word "maladministration" was proposed it was objected to by Mr. Madison as too vague, and the words "high crimes and misdemeanors" were inserted instead; but it is also true that on the 16th day of June, 1779, when debating in the House of Representatives the propriety of giving to the President the right to remove an officer, he said:

The danger, then, consists merely in this: The President can displace from office a man whose merits require that he should be continued in it. What will be the motives which the President can feel for such abuse of his power and the restraints that operate to prevent it? In the first place, he will be impeachable by this House before the Senate for such an act of maladministration, for I contend that the wanton removal of meritorious officers would subject him to impeachment and removal from his own high trust.

His great co-laborer, Alexander Hamilton, discussing in the sixty-fourth number of the Federalist the Senate as a Court of Impeachment, says:

A well-constituted court for the trial of impeachments is an object not more to be desired than difficult to be obtained in a government wholly elective. The subjects of its jurisdiction are those offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated "political," as they relate chiefly to injuries done immediately to the society itself. * * * What, it may be asked, is the true spirit of the institution itself? Is it not designed as a method of national inquest into the conduct of public men? If this be the design of it, who can so properly be the inquisitors for the Nation as the representatives of the Nation themselves? * * * As well the latter (State constitutions)

as the former (the British constitution) seem to have regarded the practice of impeachments as a bridle in the hands of the legislative body upon the executive servants of the Government. Is not this the true light in which it ought to be regarded? * * * The necessity of a numerous court for the trial of impeachments is equally dictated by the nature of the proceeding. This can never be tied down by such strict rules, either in the delineation of the offense by the prosecutors or in the construction of it by the judges as in common cases serve to limit the discretion of courts in favor of personal security.

And, again, in the seventy-eighth number of the Federalist, when making an examination of the judiciary department, we read from his pen that—

According to the plan of the convention all judges who may be appointed by the United States are to hold their offices during good behavior, which is conformable to the more approved of the State constitutions and among the rest to those of this State. Its propriety having been drawn into question by the adversaries of that plan is no light symptom of the rage for objections which disorders their imaginations and judgments. The standard of good behavior for the continuance in office of the judicial magistracy is certainly one of the most valuable of the modern improvements in the practice of governments. In a monarchy it is an excellent barrier to the despotism of princes; in a republic it is a no less excellent barrier to the encroachments and oppressions of the representative body. And it is the best expedient which can be devised in any government to secure a steady, upright, and impartial administration of the laws.

And continuing the same examination in the following paper, the seventy-ninth, he goes on:

The precautions for their responsibility are comprised in the article respecting impeachments. They are liable to be impeached for malconduct by the House of Representatives, and tried by the Senate, and if convicted may be dismissed from office and disqualified for holding any further. This is the only provision on the point which is consistent with the necessary independence of the judicial character, and is the only one which we find in our own Constitution in respect to our own judges.

And then evidently treating the word "malconduct" as covering the whole category of voluntary actions on the part of the judge which would go to his judicial character or fitness, he discusses the want of a provision for removing the judges on account of physical or mental inability as being the only emergency unprovided for. He has in mind chiefly the inability arising from advanced age, and calls attention to the difficulty of measuring the faculties of the mind and the opportunity which the attempt would give for the play of personal and party attachments and enmities.

The result—

Says he—

except in the case of insanity must for the most part be arbitrary; and insanity without any formal or express provision may be safely pronounced to be a virtual disqualification.

It can be safely said that nothing was further from the minds of the men who framed the Constitution than the construction here contended for by respondent's counsel.

Again we may look to the precedents, only to find that the word "misdemeanor" has always been treated as having a meaning of its own in parliamentary law, and that one impeachment proceeding after another has been based upon offenses not within the law of crimes. I do not repeat the many authorities for this statement which my colleagues have cited. This body, of course, being a law unto itself, is bound by no precedents save those of its own making, and even as to them no doubt has the power which any other court enjoys to overrule a previous decision, if convinced of its error. Of the cases which have been tried in this Chamber, those of Blount, Pickering, Chase, Peck, Humphreys, and Swayne have been pointed out as involving in whole or in part charges not criminal in their character. So, also, have many other cases tried in similar forums under similar constitutional provisions. Persuasive precedents are also to be found in the records of those cases investigated by the House of Representatives where articles of impeachment were authorized by a vote of the House, but for one cause or another were never tried. Such, for instance, was the case of Judge Lawrence, of the District Court of the United States for the Eastern District of Louisiana. During the year 1839 he was charged with the unauthorized removal of the clerk of his court and various improper orders made in the effort to get possession of the seal and records in the clerk's custody, with refusal to obey mandates of the Supreme Court, and with intemperance. The committee which investigated these charges recommended his impeachment for "misdemeanors in office." It is perhaps significant that the word "crimes" was intentionally omitted. The report came in as the Twenty-fifth Congress neared its close and no action was had. Doubtless the reason why the matter was never pressed is to be found in the fact that on the 3d day of September, 1841, Theodore H. McCaleb was appointed judge in his room and stead.

Again, in the year 1872, in the Forty-second Congress, the House of Representatives impeached at the bar of the Senate for "high crimes and misdemeanors" Mark H. Delahay, United States district judge for Kansas. Benjamin F. Butler headed the committee in charge and stated that—

The most grievous charge and that which is beyond all question was that his personal habits unfitted him for the judicial office; that he was intoxicated off the bench as well as on the bench.

Although there was a question as to certain alleged corrupt transactions, Mr. Daniel W. Voorhees, of Indiana, said that it was not proven to the satisfaction of several members of the committee that there was any malfeasance in this regard; but Mr. Butler said:

The committee agree that there is enough in his personal habits to found a charge upon.

Here again the resolution was reported just as Congress was about to expire, and before any further proceedings could be had the successor of Judge Delahay was appointed.

So also in the case of Judge Durell, of the United States District Court for Louisiana, in the same Congress, against whom a resolution of impeachment was reported on the ground of his usurpation of power in issuing the so-called "midnight order" putting the United States marshal in charge of the building in the city of New Orleans in which the State legislature was about to assemble. There was no pretense, of course, that this act on his part would have warranted an indictment. The matter was summed up by Mr. Benjamin F. Butler in these words:

It seemed to me so gross an exercise of power that if the judge did not know he was exceeding his powers he ought to have known it; and in either case if he did know of course he was wrong, and if he did not know he ought to have known, and therefore he did not conduct himself well in office.

Pending the proceedings Judge Durell resigned, and for this reason only the matter was discontinued.

But without stopping to multiply precedents further, we next call attention to the long list of eminent authorities and commentators on the Constitution who uphold the construction for which we contend—Story, Curtis, Cooley, Tucker, Watson, Foster, all these and many more have been cited in the course of this discussion. Speaking as a lawyer, it must be said that the weight of authority in our favor is overwhelming.

Last of all we resort to the highest of all canons for the construction of constitutions and statutes alike, viz, "the reason of the thing." It is true that the framers of the Constitution intended to create an independent judiciary, but they never contemplated a judiciary which should be totally irresponsible. Regarding public office as a public trust, they found it necessary to lodge somewhere the power to determine whether that trust had or had not been abused. In the appointment of judges they required that the judgment of the President with reference to individual fitness should be concurred in by the Senate, and quite naturally they gave to the body which had approved the appointment the power to withdraw that approval and dismiss the officer when he had shown himself faithless to his trust. In requiring first of all a majority of the House of Representatives in order to prefer articles of impeachment and then two-thirds of the Members of the Senate present to convict, they hedged the power about with all the safeguards necessary to protect the upright official and yet leave it sufficient play to preserve the public welfare. Experience has shown how more than adequate the machinery so provided has been to prevent hasty or intemperate action. Indeed, it would seem that if the fathers erred it was in making too slow and difficult the process of removing the unfaithful and unfit. I hope—indeed, I believe—that this high court will never sanction any construction of the Constitution which will render it practically impotent for the purposes of its creation.

But in the brief filed by counsel for the respondent it is suggested that if an impeachable offense need not be criminal in fact it must still be criminal in its nature. It will at once be clear that this is a definition which does not define, and that the phrase "criminal in its nature" has no more certainty to commend it than has "good behavior." Recognizing this to be true, counsel go on to say, in the attempt to define their own language, that—

for the same reason, even if the misdemeanors for which impeachment will lie are not necessarily indictable offenses, yet they must be of such a character as might properly be made criminal.

We are not called on to agree with their position as so stated, but have no great cause to fear it.

We understand a crime or misdemeanor to be, in the language of Blackstone—

An act committed or omitted in violation of a public law either forbidding or commanding it.

If the phrase "criminal in nature" means those things which might be made crimes by legislative prohibition, every act here charged against this respondent comes within the description. Certainly Congress could, by express criminal statute,

forbid a Federal judge to accept gifts of money from members of his bar, to communicate in private either orally or by letter with counsel in reference to cases pending for decision, to request financial favors from parties litigant before him, and as to the Commerce Court might well forbid the members of that court to engage in the business of hunting bargains from railroad companies engaged in interstate commerce. And, certainly, if such things are not already misdemeanors or misconduct or misbehavior, a statute to forbid them can not come too soon.

So much for the law of the case. What of the facts?

The articles of impeachment call attention to 11 distinct acts of misconduct and misbehavior on the part of the respondent and close with the thirteenth article drawing the necessary inference from the specific acts alleged. In point of time they may be divided between the service of Judge Archbald as a district judge and his service as circuit judge and judge of the Commerce Court. Five of them occurred during his district judgeship, to wit: The appointment of Jury Commissioner Woodward, the Rissinger note and the Honduras gold-mining transaction, the John Henry Jones note and the Venezuelan land speculation, the Cannon trip and the purse from the members of his bar. Those during his circuit judgeship are: The Katydid deal, the Marian Coal Co. settlement, the deal for the dump known as Packer No. 3, the transaction with Frederick Warnke, the James R. Dainty-Everhart matter, and the correspondence with Helm Bruce.

For want of time I pass by those things which occurred during his district judgeship and classify again the six occurrences charged against him as circuit judge. Five of these have to do with transactions between himself and officers of railroads or their subsidiaries, and one with the correspondence between himself and counsel for a railroad company with reference to a pending cause. I shall not undertake to repeat what has been said as to the details of these transactions nor do I conceive it to be necessary to this case to decide the minor issues of fact which are raised as to each of them, such, for instance, as the actual value of the "Katydid culm dump," which consumed so much of the time of this trial. The undisputed or admitted facts are all sufficient, and when we come to look to these five transactions with these five different railroad companies, they present certain points of similarity too striking to escape comment. These points of curious resemblance touch the very core of this whole case.

Take the Katydid, Marian, Packer No. 3, Warnke, and the Dainty-Everhart transactions and observe, first, that Robert W. Archbald was commissioned circuit judge of the United States and assigned to the Commerce Court on the 31st day of January, 1911, and that each one of these five transactions originated within a year then following and, so far as the evidence shows, were the first of their kind in which Judge Archbald had ever been engaged.

Observe, second, that not a single one of them, whether engaged in ostensibly for his profit or not, involved the expenditure on his part of a single dollar or the investment of a single penny. His sole contribution in each instance was his approach to the officers of the various companies or the hearing he obtained from them for others.

Observe, third, that in each instance the proposition did not originate with himself, but that he was approached by some third person who requested him to take up the matter with the railroad company; thus Edward J. Williams goes to him about the Katydid culm dump and induces him to approach Capt. May, Brownell, and Richardson, officers of the Erie Railroad Co. or its subsidiary, the Hillside Coal & Iron Co.; George M. Watson or some other person interests him in the settlement of the Marian Coal Co. and the sale of its assets to the Delaware, Lackawanna & Western Railroad Co., and thereupon Judge Archbald pursues beyond the point of importunity Loomis and Phillips and through them Rine and Truesdale. John Henry Jones, himself a man without financial responsibility, fixes his desires on the dump known as Packer No. 3, and at his suggestion Judge Archbald assumes the duty, again performed with vigor, of obtaining a lease on it from the Girard estate and inducing the consent thereto of the Lehigh Valley Coal Co., a subsidiary of the Lehigh Valley Railroad Co. His only connection with the proposition, in the language of the testimony, being for the purpose of obtaining a lease from the Lehigh Valley Coal Co., of seeing the Girard estate and Mr. Warriner. Frederick Warnke, having failed in person and by counsel to bend George F. Baer, president of the Philadelphia & Reading Railroad Co. and the Philadelphia & Reading Coal Co., and W. J. Richards, general manager of the latter company, to his will, induces Judge Archbald to approach Richards in his behalf, and afterwards pays to Judge Archbald $500 upon his purchase of certain property the title to which seemed open to attack on the part of the Pennsylvania Coal Co., a subsidiary of the Erie Railroad Co.; and lastly Edward J. Williams once more brings James R. Dainty and Judge Archbald together, and to Judge Archbald is once more assigned the duty of procuring, if possible, from the Lehigh Valley Coal Co. or S. D. Warriner, its vice president and general manager, a lease on a tract of land owned by that company and known as the Morris & Essex tract.

And, again, and in the fourth place, it will be noticed that in each one of these transactions Judge Archbald called upon these railroad companies to do something which prior to his intervention they had expressly refused or which was contrary to their fixed course of action, and which therefore required something more than normal effort. Thus we learn that May and Richardson had either refused outright or were indisposed to sell the Katydid dump until the respondent went to Richardson by way of Brownell. The Delaware, Lackawanna & Western Railroad Co. had not only rejected the claim of the Marian Coal Co. for damages, but was stoutly contesting it in the courts when the respondent joined Watson in the effort to force a settlement. The Lehigh Valley Coal Co. had definitely refused to lease to Madeira, Hill & Co. the banks known as Packers No. 2, No. 3, and No. 4 some time before the respondent asked it to assent to his acquiring Packer No. 3; and its general manager, Mr. Warriner, states that he had never known his company to sublease any land leased from the Girard estate except in this one instance to Judge Archbald. Richards and Baer had utterly rejected Warnke's request for the Lincoln culm dump, and only after other men had tried to help him and failed did Warnke urge Judge Archbald on them as his "last shot." And, finally, when the respondent once more approached Warriner to get from the Lehigh Valley Coal Co. the lease on the Morris & Essex tract for James R. Dainty he was promptly told—what undoubtedly he already knew—that it was not the policy of that company to lease or sell its coal lands.

In considering this chain of facts it must not for a moment be forgotten that Judge Archbald was a member of the Commerce Court and that the duties of that court are peculiar in that its business is restricted to a certain class of litigants, and that in that court is concentrated all the litigation of all the railroads of the United States engaged in interstate commerce having to do with the rates and facilities afforded by them to their shippers.

I do not mean to impugn the personal integrity of the officers of the railroads of this country, whether their names be mentioned in this proceeding or not, but I only state what every man knows to be true when I say that from the moment when Judge Archbald went upon the Commerce Court there was not a door closed against him in the office of any railroad in these United States, and not a reasonable request which he might make the refusal of which would not have been a source of embarrassment to the railroad officer to whom it was addressed. He knew this fact, if gifted with ordinary common sense. Beyond question Edward J. Williams knew it, John Henry Jones knew it, Frederick Warnke knew it, James R. Dainty knew it, and George M. Watson knew it. Can any man listen to this testimony without believing that there was a deliberate intent and purpose to utilize this situation?

In so far as the correspondence with Mr. Bruce is concerned, the respondent alleges that it was no more than an effort on his part to secure further light in a case about to be decided. No one will contend that a court may not utilize to the utmost the aid of counsel in solving his judicial doubts and difficulties, and that until final decision is rendered it is his right and, indeed, his duty to exhaust all the help which they can give him. The unfortunate part, however, of this correspondence is that no information of its progress or its contents was ever communicated to opposing counsel, and more remarkable still, not even communicated to his brother members of the court. So far as I know, it has been regarded from time immemorial as a gross indecency on the part of any court to solicit or accept suggestions, discussion, or argument from one party to a litigation in the absence or without the knowledge of the other. Every code of judicial ethics ever written has forbidden it, and if it did not, the common conscience of mankind would protest against it. No subtler poison can corrupt the streams of justice than that of private access to the judge.

Mr. President, all that was good in the feudal nobility was summed up in the two words of their deathless motto "noblesse oblige." They recognized that rank and station have their duties and obligations no less than their privileges. If this be true of those whose elevation springs from the mere accident of birth, how much more so of those whose title to office depends upon the esteem of their fellow citizens? How dare they for

one moment forget that with them always and everywhere "noblesse oblige"? No man can justly be considered fit for public office of whatever rank or kind who does not realize the double duty resting upon him—first, to administer his trust with unflinching honesty, and, second, and hardly less important, to so conduct himself that public confidence in his honesty shall remain unshaken. This confidence of the people in the integrity of their officers is the foundation stone, the prop, the support of all free government; without it constitutions and statutes are empty forms, executives, legislators, and judges the creatures of an ephemeral day. In forms of government only that which is best administered, in fact and in appearance as well, is best. A public man, it is true, may be as chaste as ice and as pure as snow and not escape suspicion. Try as he may, he can not always avoid the ready tongue of slander; but what he can do, ought to do, and must do is to avoid putting himself in any position to which suspicion can rightfully or reasonably or naturally attach. More can not be expected of him, but nothing less should be permitted.

If it be possible to discriminate in such matters, does it not seem that these obligations rest with peculiar force upon the judge? His life is to be spent as a peacemaker in adjusting the quarrels and difficulties of his fellows and in vindicating the right of society to peace and order. The appointing power or the electorate, as the case may be, his solemn oath, the State, society itself, all stand sponsor for his absolute honesty and strict impartiality. To preserve these virtues, therefore, both in essence and in seeming, should be his first and most especial care. He must realize that he has entered upon a career monastic in its requirements, not only of labor, but of abstinence and self-denial as well. Many things which he may have been accustomed to do, many things which in other men may be permitted or approved, or, if not approved, forgiven, are cut off for him from the moment when he dons his official robe, and many avenues of life are closed to him forever. The pursuit of fortune, the chase for wealth he must put behind him; and though he need not strip himself of all his worldly goods, nor cease to give a decent degree of care and thought to the preservation of such property as he may own, he must recognize that his period of accumulation, his active participation in commercial pursuits is over for the time. He has undertaken to content himself for this loss with the honors and emoluments springing from his position and the opportunities for service that it brings. His ideal must be that expressed by John Randolph, who said, in speaking of the great chancellor of Virginia, George Wythe, that—

he was in the world, yet not of the world, but was the mere incarnation of justice.

Who is there that will declare this rule too rigid or this ideal too high? If any such there be, at least even he must admit that the judge should scrupulously abstain from bargaining with litigants before him or from using the prestige of his lofty station as a means of procuring financial favors. If this were not so, think how many subtle byways of approach and influence would be opened; how quickly and surely litigants would trace the outcome of their causes to something other than a fair application of the maxims of the law; how easily a gift might be concealed under the guise of a trade opportunity; and how restless would be the suitor when compelled to submit his cause for adjudication to the favored friend or business ally of his adversary. Indeed, since judges at their best are merely human, how far might the poise and balance of their judgments be thus disturbed by a bias and a prepossession not confessed even to themselves? The mere suggestion of these things is enough. If emphasis were needed, we might content ourselves with recalling the famous but universally condemned defense of Lord Bacon, who admitted the receipt of gifts from suitors, but denied that his judgment had been adversely influenced thereby.

Measured by these standards the conduct of this respondent is indefensible indeed. There is little need to emphasize the situation by analogies; but if a member of the Interstate Commerce Commission were found to be engaged in trafficking with railroad companies for their properties; if a member of the new Court of Customs Appeals were found either in person or by his runners to be hunting bargains from importers on the New York docks, there would be none to defend him. All men will unite in regretting the necessity for action in the case at bar, but the duty of the Senate, we submit, is perfectly clear.

Mr. SIMPSON. Mr. President——

Mr. JONES. I suggest the absence of a quorum.

The PRESIDENT pro tempore. The Senator from Washington suggests the absence of a quorum. The Secretary will call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Ashurst	Crane	Kern	Shively
Bacon	Cullom	Lippitt	Simmons
Bankhead	Cummins	Lodge	Smith, Ariz.
Bourne	Curtis	McLean	Smith, Ga.
Bradley	Dillingham	Martine, N. J.	Smith, Md.
Brandegee	Dixon	Oliver	Smoot
Bristow	du Pont	Page	Stephenson
Brown	Fletcher	Paynter	Stone
Bryan	Foster	Penrose	Sutherland
Burnham	Gallinger	Perkins	Thornton
Burton	Gronna	Perky	Tillman
Chamberlain	Johnson, Me.	Pomerene	Townsend
Clapp	Jones	Richardson	
Clark, Wyo.	Kenyon	Root	

The PRESIDENT pro tempore. On a call of the roll of the Senate 54 Senators have responded to their names. A quorum of the Senate is present.

Mr. NELSON. Mr. President, I desire to have my name recorded.

The PRESIDENT pro tempore. The Senator's name can not now be recorded, but the fact that he has addressed the Chair shows that he is present.

ARGUMENT OF MR. SIMPSON OF COUNSEL FOR RESPONDENT.

Mr. SIMPSON. Mr. President, in the early days of this trial day by day one or more Senators appeared and took the oath of office for Senators who were to sit upon impeachment trials. That oath states that each Senator shall, "in all things appertaining" to this trial, "do impartial justice, according to the Constitution and laws." I take it that those words, "in all things," necessarily mean that the respondent shall be fairly advised of what the charges are against him; that the evidence shall be limited to those charges; and that the judgment which is passed upon those charges, when that time comes, shall be passed upon them, each charge by itself, according to the evidence which relates to that charge, and to that charge alone. If it does not mean that, it is a little difficult to understand what it does mean.

Upon most of those points counsel for the respondent and the managers agree. We disagree slightly as to whether the first of the things I have suggested has been thoroughly met by articles 6 and 13, but inasmuch as those two articles are in the keeping of my senior colleague, Mr. Worthington, I shall not dwell upon that point.

There is, however, in that oath one other thing that I want to dwell upon, because it is really at the root of the whole of the charges; and that is, that to this respondent "impartial justice" is to be done, "according to the Constitution and laws." What laws are there referred to? Necessarily, I take it, it must be the laws of the United States, yet I do not recall having heard during the four arguments of yesterday and to-day any particular reference to the laws of the United States.

It was suggested by several of the managers yesterday that a violation of section 132 of the Judicial Code might have been charged in some of these articles, but it was admitted in the same breath that there was no charge under that section, which relates only to bribery, and it is, of course, admitted that you can not convict this respondent on a charge of bribery when he is not charged with bribery.

It is evident that the managers felt the difficulty of their position in that regard, for when Mr. Manager STERLING made his argument yesterday, in order to avoid just that difficulty, he used this language, which I prefer to read, so that there may be no mistaking his exact meaning. I am reading from page 1345:

And so, Mr. President, I say, that outside of the language of the Constitution which I quoted there is no law which binds the Senate in this case to-day except that law which is prescribed by their own conscience, and on that, and on that alone, must depend the result of this trial. Each Senator must fix his own standard; and the result of this trial depends upon whether or not these offenses we have charged against Judge Archbald come within the law laid down by the conscience of each Senator for himself.

Sirs, if that be so, I want to know what has become of the Constitution in this case? Of what use was it to write into the Constitution that a man shall be impeached only for "treason, bribery, or other high crimes and misdemeanors," if there is no law to govern you and if you may, out of your own consciences, evolve the thought that you will dismiss this respondent from the public service simply because you wish to get rid of him. You need no proof of "treason, bribery, or other high crimes and misdemeanors" to discharge him, if that is the position you are to take in this case, for those words, under such circumstances, are unnecessary and meaningless.

I submit that that is not and can not be the true legal position. It must be precisely the reverse of that. You must find somewhere, whether it is under the "good-behavior" clause of

the Constitution or whether it is under the article relating to impeachments themselves, that upon which you can lay your finger and say that this respondent has violated that thing, or you must under your oaths of office say that he shall go free.

Nay, there is more than that in this. Judge Curtis, one of the ablest lawyers this country has ever known, met just that claim in the trial of the President. In those days of excitement one wonders not that such a position was maintained. I do wonder that at this day, in the quiet of this Senate Chamber, when men are supposed to be viewing this matter in a judicial capacity, when there is no political excitement to distract them from the performance of their duty, that such a position should be taken. But when it came before the Senate in the trial of Andrew Johnson, this is what Judge Curtis said. I may be pardoned for reading it, as probably no man could better say it than he:

> But the argument does not rest mainly, I think, upon the provisions of the Constitution concerning impeachment. It is, at any rate, vastly strengthened by the direct prohibitions of the Constitution. "Congress shall pass no bill of attainder or ex post facto law." According to that prohibition of the Constitution, if every Member of this body, sitting in its legislative capacity, and every Member of the other body, sitting in its legislative capacity, should unite in passing a law to punish an act after the act was done, that law would be a mere nullity. Yet what is claimed by the honorable managers in behalf of Members of that body? As a Congress you can not create a law to punish these acts if no law existed at the time they were done; but sitting here as judges, not only after the fact but while the case is on trial, you may individually, each one of you, create a law by himself to govern the case.

That is his quotation of what was claimed in the Johnson case, just as Mr. Manager STERLING claims it here.

Then Judge Curtis goes on:

> According to this assumption the same Constitution which has made it a bill of rights of the American citizen, not only as against Congress but as against the legislature of every State in the Union, that no ex post facto law shall be passed—this same Constitution has erected you into a body and empowered everyone of you to say aut inveniam aut faciam viam—if I can not find a law I will make one. Nay, it has clothed everyone of you with imperial power; it has enabled you to say, sic volo sic jubeo stat pro ratione voluntas—I am a law unto myself, by which law I shall govern this case.

And that is the position which Mr. Manager STERLING, speaking for the managers, asks you to take here. He asks you not to look to the law of the land for that which shall govern the rights of the parties here; but he asks you, out of your own conscience, whether your conscience agrees with mine or his or anybody's, to evolve a law which shall apply to this case, and which, when this case is over, shall cease ever thereafter to be the law. And that is said to men who are here trying a case according to law. In sooth, I would rather quote as the true guide for your deliberations what Mr. Manager Buchanan, afterwards President Buchanan, said on the trial of Judge Peck, when he said:

> I freely admit that we are bound to prove that the respondent has violated some known law of the land.

That is the claim which the respondent's counsel make here as antagonistic to the lawless claim of the managers as above quoted.

Turning now to the Constitution—and I am not going to go at great length into this, because my senior colleague is the one who prepared the brief upon this particular point and who is entitled to all the honor and credit for it and will deal with it himself when his turn comes, and hence I shall only deal with it partially—but turning to it for the purpose of partially dealing with it, let us see where we land ourselves when the Constitution is taken into consideration. It needs no panegyric here. The managers might have saved themselves the trouble of praising it up to the seventh heaven. But in this, as in everything else, the Constitution is only a frame of government. It remains for the Congress to vivify many of its provisions. It remains for Congress to write on the statute books what shall constitute "high crimes and misdemeanors," and there are already in the Revised Statutes many provisions upon that point. One of them, you may remember, came up in the Andrew Johnson impeachment. Another one I will refer to in a little while.

But it is said that in this case you do not need any statute; you have the provision of the Constitution which says that judges shall hold their offices during good behavior. Now, I want to know what good behavior means. This is the provision:

> The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior and shall at stated times receive for their services a compensation which shall not be diminished during their continuance in office.

If you take that whole clause and consider it, either historically or grammatically, you will find that the words "good behavior" relate to good behavior in office. The compensation which is to be paid is for service in the office. The good behavior which is the tenure is to be good behavior in the office. But, say the managers, it is not good behavior in office which is the test at all, and you may impeach and remove a man even though he has behaved perfectly well in his office. Personally I agree with that. I am not challenging that position; but it answers their proposition now being considered that good behavior in office is the tenure by which the respondent holds, and for a breach of that he may be removed from office without considering the impeachment clause of the Constitution.

I do not think that the good-behavior clause has anything whatever to do with the impeachment. Everybody knows how the good-behavior clause came into being. In the ancient days the judges, like all other civil officers, held their positions at the pleasure of the king. Then the barons wrested from the king his power of dismissal, and required that there should be a good-behavior tenure rather than a tenure at the pleasure of the king, subject at that time only to the power of impeachment. And then a little later—I think it was in 1701, after the revolution—there was added the removal power; so that, upon address, judges might be removed the same as upon impeachment.

Mr. WORTHINGTON. Without a trial.

Mr. SIMPSON. Without a trial. Those are the circumstances under which the good-behavior tenure came into existence.

But what does "good behavior" mean if you are going to take that alone into consideration? A man ill behaves if he speaks unduly cross to his wife and children. May he be removed from office because of that? If he is the happy owner of an automobile, he may violate the speed laws and be haled before some magistrate and fined.

Is he to be removed from office because of that? No one would answer "Yes" to either of those questions, and hence you must get down to something definite, something upon which you can lay your finger and say, "There is the definite thing which this man should have known, and as he should have known it and has chosen to violate it he must pay the penalty of his violation." That definite thing can be ascertained only by reference to the clause which says that he may be impeached for "treason, bribery, or other high crimes and misdemeanors." In the ordinary sense of the term one can understand how a man can be of perfectly good behavior in everything else and still be guilty of treason, but does anybody doubt but that he could be removed from office if he was guilty of treason? In truth, you have to go back from the good-behavior clause to the impeachment clause to find out what are the causes for an impeachment. It is the impeachment clause which is the controlling clause and not the good-behavior clause at all.

The argument that grows out of the claim that a violation of the good-behavior clause is sufficient justification for an impeachment is as clearly reasoning in a circle as anybody can well imagine. Concede that good behavior is the tenure, still you can not remove a man from office, under the Constitution, unless he is guilty of "treason, bribery, or other high crimes and misdemeanors," and hence the determinative factor as to whether or not a judge was of good behavior is whether or not he was guilty of "treason, bribery, or other high crimes and misdemeanors." And so you may go round in a circle and get nowhere except where you started.

Now, one thing must certainly be evident in this matter. It was claimed by the managers yesterday, and partially by Mr. Manager HOWLAND to-day, that the words "high crimes and misdemeanors" as used in this provision of the Constitution were taken bodily out of the English practice, the English parliamentary law, as they said. That is unquestionably true. It is not true that in all the impeachments in England they used the words "high crimes and misdemeanors," but those words are used in a number of their impeachments. This being so, you must either accept the construction placed upon those words in the lex parliamenti, or you must decline to accept that construction. If you decline to accept it, of course that branch of the argument falls by the wayside at once. But if you accept it, then the question arises, which of the English precedents are you going to accept, in view of the fact that some hold that an impeachable offense need not be an indictable one, and others hold a precisely anagonistic view. Are you going back to the days when a man was impeached simply because he happened to have been put in office by those who have themselves just been turned out? If that is the view you are going to accept, then, perhaps, every four years in this country there will be a wholesale slaughter. But if you are going to accept the best precedents which appear upon the English reports, and especially those down near to the time when the Constitution of the United States was adopted, then, as is shown in the brief, and as I have no doubt Mr. Worthington will refer you to, those best precedents show that except for an indictable offense no impeachment would lie under the laws of England.

But what are you going to do if you take the matter is to be considered solely under the language of the Constitution itself? The word "misdemeanors" in that clause must be taken either in the technical sense or in the popular sense. If that word is taken in the technical sense everybody knows that a misdemeanor taken technically is a crime pure and simple. If it is taken in the popular sense, then, notwithstanding what some text writers have said, I venture the assertion that if you go out into the cars or on the streets or in your homes and ask the people you meet what is meant by the words "treason, bribery, or other high crimes and misdemeanors" you will not find one in a thousand but will say that every one of those words imports a crime. If that is so, then necessarily, when you come to construe those words after this trial is over, you will necessarily have to reach the conclusion that these charges must be indictable or they can not be impeachable.

I have infringed somewhat probably, Mr. Worthington, on your copyright, I admit, in touching this question, but there is one other thing I want to refer to before I leave it. Mr. HOWLAND referred yesterday to the impeachment of Alexander Addison, and as he thereby trespassed upon my bailiwick I prefer to deal with that case rather than to leave Mr. Worthington to deal with it.

Mr. WORTHINGTON. Go ahead, sir.

Mr. SIMPSON. Alexander Addison was impeached. He was impeached shortly after Jefferson became President. I do not need to recall to this assembly what the condition of the public mind was at that time as between the then Republicans, represented by Jefferson, and the Federalists, who had gone out of power.

It is true, as Mr. HOWLAND stated, that the attorney general of the State presented to the supreme court a request for leave to submit to the grand jury an information against Alexander Addison. It is not accurate to state that the supreme court said that the charge against him was not an indictable offense. What the supreme court did say to the attorney general was this:

Inasmuch as the affidavit which you have presented to us does not charge either willfulness or malice against Judge Addison, it is insufficient to charge an indictable offense. If you amend it by charging willfulness and malice, then there will be a misbehavior in office charged, and that is indictable.

But those in power did not choose to amend it. Having control of both branches of the legislature of my State, they preferred to proceed by way of impeachment, and they impeached Judge Addison and he appeared. Did he say that the charges against him were not indictable? On the contrary, although he tried his own case from beginning to end, he started out and stoutly maintained throughout the proceeding that the charge was an indictable charge, and the record of the case which Mr. Manager HOWLAND had shows it most clearly.

Instead, therefore, of that case being a precedent for the position that an offense may be impeachable which is not indictable, it is the precise reverse of that; for, as stated, the respondent himself boldly admitted that the offense with which he was charged was indictable, and therefore was impeachable.

Let me ask this upon conclusion on this point of the case: Suppose that among the various suggested amendments to the Constitution of the United States some one would come along, in view of the position taken in a few places at least in our country, and ask for and succeed in obtaining an amendment which would fix a term of years for each judge. Instead of holding during good behavior, they would hold then for 10 or 20 or 30 or any number of years that you choose. Does anybody pretend, can anybody pretend, that the duties of the judge would be altered in the slightest degree? Would there not be required of him the same good behavior and could he not be impeached for the same lack of good behavior or indulgence in bad behavior, or whatever you choose to call it, just the same as he can now when there is a term of office during good behavior? If that is so, and certainly no one will say that the duty of a judge would change by reason of such an amendment as that, then, as heretofore claimed in this argument, the good-behavior clause has nothing whatever to do with the question of impeachment.

I pass from the point, perhaps having dwelt longer upon it than my time justifies, and inquire what is the law which, under the oaths of office of Senators, they are bound to apply to a large number, at least, of the articles of this impeachment? I heard it said yesterday, "Why, the facts are admitted in relation to Judge Archbald." Yes; a good many of the facts are admitted; but the question whether the facts are or are not admitted plays but the slightest conceivable part in this determination of this case. Is there in the answer any admitted fact upon which criminality can be founded? Is there in that answer any admitted fact or series of facts upon which a violation of law can be stated? Not in the slightest degree.

It is said, "Why, he purchased culm dumps and prepared to engage in the business of washing the coal in the Katydid and in Packer No. 3," and so on. Yes, he did. He admits that. Is that a crime?

Away back in 1812 Congress passed the only act of which I have any knowledge which bears even in the slightest degree on the question of the duties of a judge outside of the time when he is sitting for the performance of his judicial duties. That provision is now in section 713 of the Revised Statutes, and it reads thus:

SEC. 713. It shall not be lawful for any judge appointed under the authority of the United States to exercise the profession or employment of counsel or attorney, or to be engaged in the practice of the law. And any person offending against the prohibition of this section shall be deemed guilty of a high misdemeanor.

There you have written into your statute books that engaging in the practice of law while a judge shall be a high misdemeanor, and of course that would bring the case within the impeachment clause of the Constitution I have so often quoted. But the very fact that you do not say of a judge that he shall not engage in any other business necessarily implies, under the doctrine expressio unius, est exclusio alterius, that Congress has not yet seen fit to say that a judge shall not engage in any other business so long as he is judge; and until you see fit to say that he has the right to carry on any business, provided only he carries it on as you or I or anybody else would carry it on, in a decent and honest manner.

It was suggested yesterday that out of this trial there might grow a statute upon that point. I would welcome such a satute. If there is a doubt to-day in the public mind, or in the mind of any single Senator on this floor, that judges ought to be prohibited from carrying on any business, I would welcome the passage of such a statute, so that it might be known definitely by every judge on the Federal bench what he may and what he may not do. If, after that, after you have told him what he may not do, he willfully disobeys, then rightfully may he be impeached; but until that time comes, I submit that the only thing you ought to do or that the Congress ought to do is what was done after the trial of Judge Peck, when he was acquitted of the charge made against him. Then it was that Congress, in 1831, I think it was, passed the act in relation to contempts, which remains upon the statute books until to-day. Give us something definite, something certain, in regard to this matter; otherwise you are convicting a man, as Judge Curtis said, by an ex post facto law, and you are, as by a bill of attainder, taking from him his office without ever having theretofore told him that he should not do that which you are convicting him for doing.

There is another point in this same connection upon which I want to dwell a little while before I come to the evidence in the case. I have repeatedly said that the Senate is sitting here as a court. I am not going into the much controverted question which has arisen from time to time, and which was such a bugbear during the trial of the President, as to whether it ought to be called a high court of impeachment or only a Senate.

The question, however, is whether or not the duty which you have to perform is in point of fact a judicial duty. It must be conceded that it is not a legislative duty. That is perfectly clear. It is certainly equally clear that it is not an executive duty. I can not see what else remains unless it is a judicial duty.

But the Constitution in its various articles has made that exceedingly clear. In Article I, section 3, it says "the Senate shall have the sole power to *try* all impeachments." It says, "When the President of the United States is *tried* the Chief Justice shall preside; and no person shall be *convicted* without the concurrence of two-thirds of the Members present." It says, "*Judgment* in cases of impeachment shall not extend further than to removal from office," and so on, "but the party *convicted* shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to the law." It says in Article II, section 2, "The President * * * shall have power to grant reprieves and pardons for *offenses* against the United States, except in cases of impeachment," and Article III, section 2, lastly says "The trial of all *crimes*, except in cases of impeachment, shall be by jury, and such trial shall be held in the State where the said *crime* shall have been committed."

Now, I want to ask if it is possible to use words more clearly demonstrative that that which you as Senators are doing you are doing in a judicial capacity. That is what I am claiming at this stage. It will reach up itself to its proper conclusion after a little while. The point is, you are in fact sitting as judges. I read, for it expresses briefly the thought, the language of Prof.

Dwight in Sixth American Law Register (n. s.), pages 258 and 259:

When a criminal act has been committed it may evidently be regarded in three aspects—first, the injury to the individual or his family may be considered; second, the wrong to the executive officer charged with the administration of the laws may be looked at; and, third, the mind may dwell upon the general wrong done to the State, or "the people," as we say in modern times. This view was early taken in the common law; the injury to the individual was redressed by a proceeding called an appeal; the injury to the King by a process called an indictment; the wrong to the entire Nation by a proceeding called an impeachment. In process of time the injury to the individual came to be regarded as a private and not as a public wrong, so that in the progress of the law there remained two great criminal proceedings—indictment and impeachment.

Mr. Manager CLAYTON, when reference was made to that quotation in a very early stage of this trial, said that many of the things which Prof. Dwight referred to had not been sustained by the adjudications of this body. That I do not care to go into. It is immaterial for the thought which I wish to present. Certain it is, however, that that historical statement, thus briefly presented, has never been controverted by anybody and can not successfully be, for it is part of the judicial history of England.

Indeed, when the managers were preparing their brief in this case they unwittingly said some of the things which I wish to quote to you now as bearing out exactly the thought that I want to present. I am reading from pages 6 and 7 of the brief, particularly in the quotations from Tucker on the Constitution. He says this:

(*f*) The word "maladministration," which Mr. Mason originally proposed and which he displaced because of its vagueness for the words "other high crimes and misdemeanors," was intended to embrace all official delinquency or maladministration by an officer of the Government where it was criminal; that is, where the act done was done with willful purpose to violate public duty. There can be no crime in an act where it is done through inadvertence or mistake, or from misjudgment. Where it is a willful and purposed violation of duty it is criminal.

In another place:

So, if he omits a judicial duty, as well as when he commits a violation of duty, he is guilty of crime or misdemeanor; for, says Blackstone, "crime or misdemeanor is an act committed or omitted in violation of a public law either forbidding or commanding it."

* * * * * * *

And again:

It must be criminal misbehavior—a purposed defiance of official duty—to disqualify the man from holding office, or disable him from ever after holding office, which constitute the penalty upon conviction under the impeachment process.

I claim no more than that for the purpose of my argument in this case.

So, when they came to quote from Foster on the Constitution, unhappily they left out the vital clause in the extract which they undertook to make. It was most convenient to substitute asterisks for that vital clause, but I prefer to read the whole of the paragraph, including the vital clause and leaving out the asterisks. As it is quoted in that brief, these are the words:

The term "high crimes and misdemeanors" has no significance in the common law concerning crimes subject to indictment. It can be found only in the law of Parliament and is the technical term which has been used by the Commons at the bar of the Lords for centuries before the existence of the United States.

Then come the asterisks. These are the words which the asterisks displace:

But the judgments of the Senate of the United States in the cases of Chase and Peck, as well as those of the State senates in the different cases which have been before them, have established the rule that no officer should be impeached for any act that does not have, at least, the characteristics of a crime, and public opinion must be irremediably debauched by party spirit before it will sanction any other course.

That is the law as I understand it, and I pass therefore from it. It is a rule of law founded on legal principles, applied not only in impeachment cases, but in every other class of cases that ever comes before a court. At the very basis of all constructions, whether of constitution or of statutes or of contracts, is the maxim noscitur à sociis, which says neither more nor less than that words are to be taken in their meaning in conjunction with the other words with which they are, in fact, associated. It has found this construction so many times that it is perhaps only necessary for me to refer to one more set of cases in order to put the point clearly in the minds of the Senate.

In the various turnpike cases, when they were more flourishing in the earlier days, it was quite common to say that the turnpike company should have the right to charge toll for all carriages, wagons, carts, and other vehicles which used the turnpike, and also they might charge toll for all horses, cattle, hogs, and other animals which used the turnpike. But it was held without exception in every case that I ever heard tell of that the words "other vehicles" did not, for instance, cover baby carriages, though they were vehicles just as well as the others; and that the word "animals" did not cover man, though he is an animal just as much as a horse or a steer, and perhaps quite as much of a hog sometimes as the ones that pay toll when they travel along the turnpike.

The point is that general words, like the word "misdemeanor" in this case, are to be construed in accordance with the words which precede; and under the constitutional provision that is particularly emphasized by the use of the word "other" in the phrase "treason, bribery, or other high crimes and misdemeanors."

If the position I have taken on this point be accurate, we ought to be able to take the next step, and a long one, in regard to this matter. If this is a court, then it is perfectly evident that the rules which experience has demonstrated to be wise and applicable in trials in other courts ought to be applied here, and among those rules which are down at the very foundation of Anglo-Saxon jurisprudence are those which relate to the effect of character evidence, to the effect of the reasonable-doubt doctrine, to the effect of the presumption of innocence, and to the effect to be given to admissions made during a trial. I prefer for a convenient purpose to treat of the question of the admissions made during the trial first. When we were introducing the character evidence in this case Mr. Manager CLAYTON rose and said this——

Mr. CLAYTON. On what page?

Mr. SIMPSON. On page 888:

I may say, Mr. President, in the beginning, that we have not controverted the good character of Judge Archbald. Perhaps if we had controverted that a larger range would be permissible for the respondent in reply to that controversy raised by the managers. But the managers have not raised that question.

Again, on page 889:

We have not charged that while actually sitting on the bench Judge Archbald was guilty of these several misbehaviors. We have charged misbehaviors when he was not sitting on the bench. The whole case is his behavior aside from the discharge of his mere official duties while actually sitting.

Again, on page 889:

Mr. President, I do not think it necessary to detain the Senate longer. I insist that inasmuch as his good character is not controverted this range of examination sought here by the counsel is not permissible.

Again—I read from page 915:

So, Mr. President, I respectfully submit to you and to the Senate that after these gentlemen have examined 10 witnesses on character and when the testimony of those character witnesses is not disputed—is not controverted—and when the managers tell the Senate it will not be controverted, it seems to me that the further examination of character witnesses might well be dispensed with.

It was in recognition of that fact—that is, the evidence relating to the character witnesses—that this body passed its order that 15 character witnesses should be the limit. A little later on in the examination, on page 891, this question was asked:

Q. Now, Maj. Warren, I want to ask you to tell us, from your long acquaintance with Judge Archbald and your observation of him as a judge, what were his principal characteristics as a judge as to integrity, ability, and industry.

Objection was made to that, and your Presiding Officer in sustaining the objection said, on page 892:

This particular question is as to the opinion of the witness himself. If the counsel would limit his question to the witness's knowledge of the general character of the respondent for judicial integrity, the Chair would think that was competent; but this question not only asks the individual opinion of the witness, leaving aside the question of general reputation, but it goes further and asks for the opinion of the witness, not only as to integrity, but as to ability and industry, none of which characteristics or features are involved, as the Chair understands, in any issue before the Senate at this time.

And the managers sat here and did not raise any point touching that ruling of the Chair, which was in fact made on their objection, so that they stand to-day estopped by their silence from denying Judge Archbald's judicial integrity, or his individual integrity, or his ability, or his industry. Those facts must stand throughout this trial as admitted facts, not relating to one article but to every article in the case.

One other reading and I shall have passed from that which I want to read in regard to this point. I am reading from page 905. When Judge Gray was upon the witness stand I asked him this question:

Q. Will you please tell us what is his reputation for integrity and impartiality as a judge, if you know?

That was objected to, and the Presiding Officer said this, on page 906:

The PRESIDING OFFICER. The Chair thinks, however, that the question transcends the limitation. The witness is asked the question as to his impartiality. The Chair thinks it ought to be limited as to his reputation for integrity as a judge.

And again the managers sat silent.

We have therefore as admitted facts, I may say, certainly, undisputed facts in this case, that Judge Archbald is a man whose integrity is unquestioned, whose judicial integrity is unquestioned, whose industry, whose ability, whose impartiality

are all unquestioned; and those elements are necessarily vital in determining the truth or falsity of the charges which are here made against him.

Let us see how far they go as determined by the Supreme Court of the United States. I prefer to limit my quotations to the judgments of that tribunal, not only because it stands highest in the land, but because it is the best exponent on Federal questions.

In the case of Kirby *v.* The United States (174 U. S., 47), this was said:

> The presumption of the innocence of an accused attends him throughout the trial and has relation to every fact that must be established in order to prove his guilt beyond reasonable doubt. "This presumption," this court has said, "is an instrument of proof created by the law in favor of one accused, whereby his innocence is established until sufficient evidence is introduced to overcome the proof which the law has created."

In Coffin versus United States, One hundred and fifty-sixth United States Reports, I read from page 460. This is said in the opinion written by the present Chief Justice:

> Concluding, then, that the presumption of innocence is evidence in favor of the accused introduced by the law in his behalf, let us consider what is "reasonable doubt." It is of necessity the condition of mind produced by the proof resulting from the evidence in the cause. It is the result of the proof, not the proof itself; whereas the presumption of innocence is one of the instruments of proof, going to bring about the proof, from which reasonable doubt arises; thus one is a cause, the other an effect. To say that the one is the equivalent of the other is therefore to say that legal evidence can be excluded from the jury, and that such exclusion may be cured by instructing them correctly in regard to the method by which they are required to reach their conclusion upon the proof actually before them. In other words, that the exclusion of an important element of proof can be justified by correctly instructing as to the proof admitted.

Skipping a portion, I read now from page 461:

> Whether thus confining them to "the proofs," and only to the proofs, would have been error if the jury had been instructed that the presumption of innocence was a part of the legal proof, need not be considered, since it is clear that the failure to instruct them in regard to it excluded from their minds a portion of the proof created by law, and which they were bound to consider. "The proofs and the proofs only" confined them to those matters which were admitted to their consideration by the court, and among those elements of proof the court expressly refused to include the presumption of innocence, to which the accused was entitled, and the benefit whereof both the court and the jury were bound to extend him.

Again, from Edgington *v.* United States (164 U. S., p. 365), I read this:

> It is impossible, we think, to read the charge without perceiving that the leading thought in the mind of the learned judge was that evidence of good character could only be considered if the rest of the evidence created a doubt of defendant's guilt. He stated that such evidence "is of value in conflicting cases," and that if the mind of the jury "hesitates on any point as to the guilt of the defendant, then you have the right and should consider the testimony given as to his good character."
>
> Whatever may have been said in some of the earlier cases, to the effect that evidence of the good character of the defendant is not to be considered unless the other evidence leaves the mind in doubt, the decided weight of authority now is that good character, when considered in connection with the other evidence in the case, may generate a reasonable doubt. The circumstances may be such that an established reputation for good character, if it is relevant to the issue, would alone create a reasonable doubt, although without it the other evidence would be convincing.

Now, if those principles are applied to the admissions as to good character, as to industry, as to integrity, and as to impartiality, I ask what, then, is the conclusion which the Senate ought to reach in regard to considering the evidence in the case?

Perhaps before passing, however, to that evidence I ought to refer somewhat briefly, as I must, but none the less in order to disabuse the minds of the Senate of any lodgment which may have been found in it by reason of the case of the Amity Coal Co., which was called to the attention of Mr. Willard when he was upon the witness stand, and to Judge Gray likewise, so that you may know that that which was said by the Supreme Court of Pennsylvania casts, in fact, no reflection upon Judge Archbald. We have in our State a statute providing for the formation of joint-stock associations. Like most of those statutes they are a delusion and a snare to anybody who tries to form an association under them. If you fail to dot an "i" or to cross a "t" you are almost certain to find yourself in a position where you will pay the penalty in any suit that happens to be brought against you individually. In this particular case the statute provided, among other things, that the certificate should state "the amount of capital stock of the said association subscribed by each subscriber, the total amount of the capital, and when and how to be paid."

Judge Archbald, before he became a judge at all, in drawing the articles of association for himself and his associates when they formed the Amity Coal Co., did not pay in anything. They construed that statute to mean, when it says "when and how to be paid," that there was not any necessity at the time to pay in anything. That view of the law was taken by the judge of the lower court when the case came before him for consideration. It went to the upper court, the supreme court of the State, and they said that that was not a proper construction of it, and this though every dollar of the capital had in fact been paid in in the interim and a great many thousands of dollars besides. But because in the inception of the thing there had not been a payment in of money, which the court thought by analogy under the corporation act ought to be at least 10 per cent of the amount of capital subscribed, therefore, there was held to be a personal liability in that case, but the court was most careful to say—I am now quoting from the opinion on page 899:

> In saying this we do not impute an intention to defraud or reflect upon the motives of the gentlemen by whom the Amity Coal Co. was organized. They may have supposed themselves to be complying with the provisions of the act. Our business is not with their motives, but with what they did; and our inquiry is whether this association was organized in accordance with the fair interpretation of the act of 1874.

And because of that construction they held it was not; and yet two of the ablest judges of that court—I mean of the Supreme Court—agreeing with the judgment of the judges of the court below, dissented from that conclusion. Now, I ask the Senate, can it be that because Judge Archbald drew the articles which, in the judgment of two of the upper judges of the Supreme Court and all of the judges of the lower court, were in exact compliance with the law, that he is to be held guilty of any moral wrong because in fact the upper court thought that it was not in compliance with the law, and that, too, in face of the fact that the upper court said that they did not mean in any way to reflect upon him? If that is so, I want to know how many of the 60 lawyer Members of this Senate would always find themselves safe from just such a reflection as that. If a man, whether a lawyer or no, is bound to be held to be immoral because he makes a mistake in the law, then the lawyers are in as sad a plight as were the lawyers in the early days of my Commonwealth, when the Quakers there refused to permit any lawyers to dwell therein.

Now, let us see what is the result of the matter so far presented. We have a man admittedly of high character; we have a man whose judicial integrity is not challenged; we have a man who, it is admitted, is impartial in all that which he has done, who is able and who is industrious, and you are asked, notwithstanding those admitted facts, to find that he has been guilty of wrongdoing.

You get down, therefore, just to this position: You are asked to say that because of suspicion this man is to be convicted of a wrong and excluded from office, though it is an admitted fact that there was nothing done which was wrong at all; in other words, the suspicion of wrong is to control the fact that there was no wrong in this case. Even in the palmiest days of impeachment, under the English practice, no case can be found in which such admissions appear upon the record of an impeachment trial.

I pass, Senators, from the law and carry myself to the facts in the case. I desire to say that my senior colleague will look after article No. 1, article No. 3, article No. 6, and article No. 13. The other charges are the ones which I am to take care of as best I may in this argument before you.

Article 2 charges that Judge Archbald, while a judge of the Commerce Court, undertook to effect a settlement between the Marian Coal Co. and the Delaware, Lackawanna & Western Railroad Co.; that the Delaware, Lackawanna & Western Railroad Co. was a litigant in the court over which he was a judge; that he undertook to do that for a consideration; that, by various conversations and correspondence, he undertook to use his influence as a judge for that consideration to bring to pass a settlement; and that, by reason of those acts, he is guilty of a high crime and misdemeanor.

You will observe in the answer he admits that he did try to effect the settlement. He admits that he did that because of his friendship for Mr. Watson and for Mr. C. G. Boland; but he denies everything which undertakes to import to that which he did either criminality or any breach of good manners or propriety. The issues which you are called upon, therefore, to consider is whether or not an impeachable offense is charged—as to which I have said all that I desire to say—whether or not Judge Archbald, for a consideration, undertook to effect that settlement; whether or not what is commonly spoken of here as the Lighterage case was in any real sense pending in his court at the time he undertook to effect that settlement, and, if it was, what the effect was; whether or not he corruptly used his influence as a judge and whether or not what he did constituted a high misdemeanor in office.

The first question, of course, is whether he undertook to do that for a consideration. The managers once or twice during the trial and once or twice yesterday said that they did not think that the question as to whether or not he undertook to do it for a consideration moving to himself was a material ques-

tion, but by innuendo they still insist, to use the language of Mr. Manager STERLING, that they believe that he did.

I agree with them that the question as to whether or not he was to do this for a consideration moving to himself is immaterial in this sense; that is to say, if he undertook to effect that settlement for a consideration moving to his friend it would be just as much a crime and a wrong, if it was done corruptly, as it would have been if it had been done for a consideration moving to himself; but there must inhere in it corruption, otherwise there is no crime and no wrong in relation to it. That is the point as to which this evidence becomes important.

The only evidence as to whether or not he did undertake for a consideration to do anything rests in the statement of Mr. C. G. Boland. When Mr. C. G. Boland was recalled as a witness to testify as to this point, the Senate will remember that there was quite an extended argument, and, by a comparatively small vote, the objection of the respondent's counsel was overruled. The question was then put—and I will read the question and answer:

Q. Now, go ahead and state what he said about that.—A. He said that as the judge was assisting him in the matter he felt that he ought to be compensated, and that he proposed to compensate him by one-fourth of the amount he was to receive in excess of $95,000, which was the price it was to net to us.

That is found on page 720. That is to say—so that it may have the fullest effect that can be given to it—Mr. C. G. Boland said that Mr. Watson said that he, Mr. Watson, thought the judge ought to be compensated, and that he, Mr. Watson, proposed to compensate him. That, you will remember, Mr. Boland testified, was said when he and Mr. Watson were alone. He further said it was never communicated to the judge at any time or under any circumstances; and I want to ask the Senate whether or not they can find a man guilty of a charge like that upon a double hearsay statement never carried to the man who is to be charged?

But that question is only a very small part of the answer to it. Mr. Watson, whose testimony you have not heard read, denies that anything like that was said. I shall have, therefore, to detain you long enough to read a portion of that testimony. I read from pages 1141 and 1142:

Mr. WORTHINGTON. One thing, there has been some testimony here in relation to you that I have not heard you asked about, and that is about a division of the difference between one hundred thousand and a hundred and sixty thousand dollars into fours. Have you read the testimony on that subject?

Mr. WATSON. Yes.

Mr. WORTHINGTON. What have you to say about it, Mr. Watson?

Mr. WATSON. I never heard that until I read it.

Mr. WORTHINGTON. Had there been any suggestion by anybody, while the negotiations were going on, that Mr. Phillips or Mr. Loomis should participate in what was to be paid?

Mr. WATSON. Absolutely not.

Mr. WORTHINGTON. Was there any suggestion at any time that Judge Archbald should receive anything in any way as compensation for what he did in this matter?

Mr. WATSON. Not to me; I never heard of it.

Mr. WORTHINGTON. Was there anything said about that by anybody, to your knowledge?

Mr. WATSON. No; I do not know anything about that. Only two people that I ever heard was to get any money out of this, and one was Reynolds and one was me. That is all I ever heard of.

I will not stop here to read the judge's testimony denying that same statement, because it must be very fresh in your own minds. I submit that, with the two disputing it and Mr. Boland not undertaking to assert it of his own knowledge, but only that somebody else said it, you can draw no conclusion antagonistic to the judge. But the case is infinitely stronger than that. The same Mr. Boland, who says that Watson told him that thing, testified thus before Mr. Wrisley Brown:

Mr. BROWN. Did Watson give you any intimation of what was to become of this large excess over the $100,000?

C. G. BOLAND. No.

Mr. BROWN. You did not concern yourself about it?

C. G. BOLAND. No.

And when he was asked to explain before the Senate why it was that he made that statement to Mr. Wrisley Brown, which he now says is a lie, he said that he did not want to be drawn into the matter because Mr. Watson made that statement also regarding Mr. Loomis and Mr. Phillips, and that he had no proof that it was true. When he was put upon the stand here to testify in regard to it, he said that in the testimony he gave here he did not give the names of Mr. Phillips and Mr. Loomis, because he did not believe there was any agreement or understanding ever made that they were to get any part of that money, and yet the same thing was said about them that was said about Judge Archbald. He chooses to retail the same slander, said by a man he does not believe, against Judge Archbald in this case, though refusing to give it as against others charged by the same man at the same time, and the reason he does this I leave you to guess. So it is otherwise throughout the testimony of Mr. Boland. He says in another place that he knows nothing affecting the integrity of Judge Archbald except that which may be drawn out in relation to the $500 note which was brought to him—C. G. Boland—for discount, and he repeats that in two or three different ways. He makes no explanation of why he said that thing if it was not true, and yet the managers ask you, by innuendo, to believe that Judge Archbald was guilty of a wrong because of a statement of a man like that, who himself admits in your presence that he told an untruth about it at least three times.

I pass, Senators, away from the question of consideration. What was in fact—and this is the second point at issue under these pleadings—what was in fact the situation in relation to the Lighterage case? And, by the way, I may say here if any reference I make to the evidence in this argument is doubted by any Senator, or is challenged in any way, I shall be glad to have my attention called to it, because I have here a memorandum of the pages of the testimony covering every one of these points.

What is the true position with relation to the Lighterage case? It is true that technically that case was pending in the Commerce Court, and I may as well at the same time deal with the Fuel Rate case, though it only appertains to article No. 1, which Mr. Worthington has in charge. It is true that that case also technically was pending in the Commerce Court at the time these negotiations were carried on, but both cases were only technically pending there. I want to put that broadly, so that when Mr. Manager CLAYTON comes to reply to the argument which I am this day making he may challenge that in some way, if he chooses so to do. Both of those cases had been decided in the month of May preceding the August when these negotiations commenced. It is true they were both decided on motions for preliminary injunction and that in the month of June both of those cases had been appealed to the Supreme Court of the United States; but those cases both raised questions of law on undisputed facts, and the records, which were offered in your presence on Tuesday, show that beyond the peradventure of a doubt.

In the Fuel Rate case—I am not going into the facts in regard to the case, for it is wholly unnecessary to do so—the Commerce Court granted a special injunction, and the case went to the Supreme Court, which reversed the court below and entered an order that the record should be remitted to the Commerce Court with instructions to dismiss the petition.

Everybody supposed the case was at an end, so far as the Commerce Court was concerned, when it was appealed to the Supreme Court, and that it only had to be reviewed on its law in the Supreme Court, and the Supreme Court agreed to that view and entered the order that I have stated. When the Lighterage case went to the Supreme Court, the Supreme Court affirmed the judgment of the Commerce Court and sent the case back for further hearing. When it came back, both the counsel for the United States and the counsel for the Interstate Commerce Commission withdrew their answers, asked leave of the Commerce Court to present motions to dismiss, and elected to stand upon the motions to dismiss, thereby establishing that the facts averred in the petition were true and that there was nothing else to be considered but the law as applicable to those facts.

The opinion of Judge Carland, which is also upon this record, rendered after these proceedings commenced, and when Judge Archbald did not sit at all, states the facts just as I have stated them to you; and the Commerce Court, Judge Archbald not being present, as a matter of law, affirmed their prior ruling that the Lighterage case was properly decided theretofore. So you see that it is only in the most technical sense possible that the Delaware, Lackawanna & Western Railroad Co. had any cases then pending in the Commerce Court.

I thought I had stated, but my colleague thinks I did not, that the Lighterage case went up to the Supreme Court and was affirmed and came back again. Both cases went up at the same date, in June, 1911.

The next and the only other point in this article is the question as to whether or not Judge Archbald used his influence as a judge to assist in that settlement. He says he did not and, of course, nobody contradicts him. It is quite true, as the managers say, that it is a practical impossibility for a prosecuting officer to get into the mind of a man, and that he can only reach out by circumstantial evidence to establish such a fact. That I quite agree to, but the managers can not establish a fact by circumstantial evidence unless the circumstantial evidence, with at least reasonable certainty, moves to the establishment of the fact; and that is not the situation here.

One would have supposed from the arguments which were presented to you yesterday upon that point that Judge Archbald,

or perhaps Mr. Watson, or both, were the ones who instituted the thought of making that settlement; but that is not so. I repeat that it is not so, because there are upon this record three letters offered in evidence by the managers, showing attempts to settle before Mr. Watson was even consulted, in which letters the fact is referred to that Mr. Reynolds, who was the other counsel for the Bolands, was the party being considered in connection with the question of settlement up to that time, and neither Watson nor Judge Archbald had anything whatever to do with it. But Reynolds, for some reason not necessary to consider, was not a success in bringing about a settlement; and, as Mr. C. G. Boland himself said, he feared that, unless something was done, they would lose their property, and so—it may be at the suggestion of Mr. Williams, but, at any rate, they went to Watson to get him to see if he could not effect a settlement.

What Watson does before he sees Judge Archbald I neither know nor care. He goes to Judge Archbald to see if he can not get an introduction to Mr. Loomis, who had been a neighbor of Judge Archbald in Scranton for a number of years. He gets his introduction and then the negotiations commence. There were various interviews. It is quite unnecessary to consider how many nor when they took place, but they all occurred on or after August 22, 1911. There were various interviews which Mr. Watson had with various officers of this railroad company, but he did not get very far, as they were so largely at variance in regard to the figures. He was not willing to come down far enough, nor were they willing to go up high enough, to reach even a reasonable basis for effecting a settlement. Boland says, and Watson and Judge Archbald deny, that there was on the 23d of August a meeting held in the judge's office, in which the question was spoken of as to having a writing to show that Watson was entitled to a fee of $5,000. It was denied by both Watson and Archbald that there ever was such a meeting, and Mr. Watson says he never saw that paper until it was called to his attention before the Judiciary Committee.

A great point was attempted to be made yesterday that there was a raising of the price from $100,000 to $161,000, although the amount of $100,000 was spoken of at the meeting in Judge Archbald's office, as Mr. Boland claims and the others dispute. I do not care whether that is so or not. It is as immaterial to this case as anything very well can be; but the fact is testified to by Mr. Watson on pages 1116 and 1117 and 1119 and 1120, where he sets forth just exactly how the change from $100,000 to $161,000 came to be brought about. I read from the top of page 1117:

Mr. WATSON. From the first time that the price was fixed at $100,000 the property that was to be passed had changed very materially. There were different things to be done with it, and then when they offered this property first there was no two-thirds interest offered. The Marian Coal Co. in its entirety was offered to me.

Mr. FLOYD. For $100,000?

Mr. WATSON. For $100,000. That would include the suit—well, I may say the suit; yes. There was the Peale matter; Mr. Peale had $16,000, which was admitted. Mr. Peale finally got a judgment stated for thirty-odd thousand dollars, $34,000, or something like that. Now, that was hanging fire over there, and I didn't know that that was a part of this transaction when I first undertook to handle this for $100,000. Now, there was another thing that I didn't know, and that is that one-third of this stock that represented the Marian Coal Co. was in Mr. Peale's hands and belonged to him. That is two things that I didn't know about. The first, the increased indebtedness, the $16,000, I did get an idea of before we got very far along with it. But the larger amount, this $18,000 more added to it, I did not get that, you know, until the decree was—not the decree—until the judgment was entered, which was along after I had gotten out of the matter. Now, I did not know what that litigation was. Then there was another thing that I did not know. I did not know that the Bolands had any dispute of title over there, which they did have finally, and that the Lackawanna claimed a good, sizable interest in this dump. Now, I did not know that. Then, when I brought that to Mr. Boland's attention, and he began to see his $100,000 being carved out by $16,000, by a third interest of the Peales, and by a quarter interest of the Lackawanna, it began to get him down so that he would have trouble getting home on the proceeds; and therefore we agreed or he agreed to raise that to the $161,000, and I was to make that up on the rates. That is what was to happen.

That is the situation, and that is the reason why the price was raised. No one pretends that Judge Archbald had anything whatsoever to do with it. I care not whether he knew that under the original arrangement $100,000 was to be asked and that it was afterwards raised to $161,000, or whether he only knew that $161,000 was to be asked, the result is precisely the same so far as it can in any way affect this case.

It is said, and said truly, that the judge had a later interview with Loomis on or about the 25th of September, and then on the 27th he got a letter from Loomis saying that no settlement could be made because the Bolands were asking too much; that he had an interview with Phillips at his own home on the 30th of September; that he had an interview here in Washington with Watson on or about the 7th of October; that he had a still later interview with Mr. Boland asking him to see Mr. Loomis after Watson had failed and given up the job; that he did see Loomis and found that he could not effect a settlement, and then on the 30th of November returned all the papers to Mr. Watson and told him that the settlement could not be carried through because of the vast difference between them as to the figures which the one was willing to give the other was willing to accept. Mr. Worthington asks me to read in the same connection with that which I have already read a sentence from the testimony of Mr. Watson. I read from page 1119:

I had every reason to believe perhaps it was so, and therefore we added it together and it made $161,000, and that is the only price I ever had, the only price I was ever authorized to offer the land for to the Lackawanna road, and I offered it at that price.

I may say just in this connection that there is a letter of Mr. Phillips to Mr. Loomis, both of them officers of this road, showing exactly how that $161,000 was made up, on the demand of Mr. Boland, in that it was by multiplying 376,000 tons of coal, which had been shipped from their washery over this road, by 43 cents a ton, which they claimed was the excess price charged against them, making just exactly the price which was presented to the Delaware, Lackawanna & Western Railroad Co. by him.

There is no thought or pretense that Judge Archbald had any interview with them in which anything of that kind was said, or that he had anything whatsoever to do with the sending of that letter. There were, even after Judge Archbald returned the papers to Mr. Boland—which, by the way, they never produced, because those papers would have shown the $161,000 most clearly, and it is the only letter that they did not produce themselves, although it was sent to and admittedly received by them, and although Mr. Pryor says he saw the papers which were inclosed lying on their desks, and Mr. Boland himself testified to it—there were later attempts to settle made by the Bolands themselves and Mr. Phillips went upon the stand and testified to it. I read from page 878:

Q. (By Mr. Worthington.) State any reason Mr. Christopher G. Boland gave you on that occasion for wishing to have the claim of the Marian Coal Co. against the railroad company settled.—A. He stated in a very affecting way, with tears rolling and coursing down his cheeks, that he was worried and fretting about his brother Will; that he was afraid he would lose his mind.

But it is said here that there is to be an inference drawn as against Judge Archbald unfavorably because the letters which were sent to the officials of the railroad company were written on Commerce Court paper. Mr. Manager STERLING said yesterday that they were all thus written. That is a mistake; not an intentional mistake, but none the less an actual mistake. Most of them were so written. So also most of the letters which were written to other people appearing in this case were written on Commerce Court paper. But there were a few letters written not on Commerce Court paper as well to the railroad officials as to other people. But the explanation of it, and the perfectly natural explanation of it, was that which was given by Judge Archbald when the question was put to him. He said, "I never thought anything about it. I dictated the letters to my stenographer, and she wrote the letters on that paper because it happened to be handiest, and she brought them to me and I signed them, and the letters were sent out."

I do not know how far custom has made it right for men in official position to write private and personal matters on official paper. I know that I personally have received a great many letters thus written, and on purely private business, and I know that I never heard it challenged until this case commenced, or heard it said that that was proof of any wrongdoing by anybody.

I recall reading in sacred history that some 19 centuries ago the scribes and pharisees brought before Christ a woman who was taken in adultery, and they tempted Him, asking Him what should be done with that woman. The Sacred Book tells us He stooped down and wrote with His finger upon the ground. And when the men who brought her there saw what was written upon the ground they all went away without making any accusation against her. Tradition says that that which was there written upon the ground contained the names of those with whom that woman's accusers had themselves committed adultery.

I wonder whether or not if that same inerrant finger could come here this day and write upon the walls of this Chamber, if, indeed, those walls are vast enough for that purpose, the names of those to whom Judge Archbald's accusers had written on private business upon official stationery, how many of those accusers, like the scribes and pharisees of old, would quietly slide away, not waiting to hear "He that is without sin among you, let him cast the first stone."

But it was said that the pendency of the Peale case had something to do with it. That case was pending in Judge Archbald's court, and they say that he had no business to undertake to act in this matter because of the pendency of that case. But,

gentlemen, it is an admitted fact, entirely outside of the facts to which I have already called your attention, that there was nothing done in that case which was in any way improper. I read from page 933, where objection was made to an offer of proof by Mr. Fitzgerald, who was one of the counsel in the case, because there was no claim of improper conduct. The Presiding Officer ruled that:

The Chair remembers there is no issue raised in the articles of impeachment as to the improper conduct of Judge Archbald in this particular case.

And, again:

If the facts indicated by the question were established by the evidence, it would not affect the case in any manner, because there is no charge in the articles of impeachment of any improper conduct of Judge Archbald in that particular case, as the Chair recollects.

And that admission on behalf of the managers answers so completely the wild statements which were made by William P. Boland when upon the witness stand, namely, that the judge did influence Judge Witmer to make a wrongful decision, and that the judge decided the demurrer in the case because of their refusal to discount the note, although the note was not drawn for months after the decision was rendered—that admission on behalf of the managers takes that matter so far out of this case that it is not worthy of further consideration.

I think, so far as article 2 is concerned, we are now in a position to summarize it without going far astray as to the result. We have here admittedly a judge of integrity—of integrity as a judge and as a man—impartial in all he did, who never undertook to sit in any case, even as to these litigants, after he had undertaken to settle their controversy; who is able, industrious, and impartial; and you are asked to say that that man is corrupt and dishonest and ought to be removed simply because he undertakes at the behest of one friend to settle the difficulty which another friend is in. I want to know what the Members of this Senate would do if they were in the position in which Judge Archbald was, as stated by him. I read from page 1195:

I had known Mr. Boland 30 or 40 years; I can not tell just how long. I knew him familiarly enough to speak of him by his name. People call him "Christy." I talked with him in a friendly and familiar way every time we met. He came to me in my office on one occasion—I can not fix the exact date; I have no means of doing it—and told me about this settlement. He said that the matter was preying on the mind of his brother, W. P. Boland, and he expected if it went on further that it would end in his brother going to an asylum. My impression is that tears came to his eyes, and he drew upon my sympathy in that way by what he said and in his appearance. He asked and spoke about this settlement, and wanted me to see what I could do with regard to it. He came two or three other times in a similar way at a later date. I can not fix the time when that occurred.

I want to know, gentlemen, if a friend of yours of 30 or 40 years' standing had come to you and said that thing to you what would you have done? Mind you, C. G. Boland was called upon the stand as a witness after that testimony was given and never undertook to dispute it in the slightest degree. What would you have done? I believe as long as red blood flows in your veins you would have done just what Judge Archbald did. You would have gone out at the behest of a friend of that kind and you would have striven to settle the difficulty which so seriously threatened the mind and memory of that friend's brother. And there could be drawn as against you for doing that thing nothing whatsoever; but in your favor, many, many things.

If Judge Archbald had endeavored to sit in that case after that time, there might have been some slight shadow of a complaint; but there is no pretense of that thing. He exercised his manhood rights; he played the part of a Christian as he was required to play it, and instead of being condemned he should be praised.

I recall that in the Sermon on the Mount we are told that "blessed are the peacemakers, for they shall be called the children of God." But if a man were in Federal office and should be deprived of the right to do that thing, then must it be said that "cursed are the peacemakers who are in the Federal service, for they shall be impeached for treason, bribery, or other high crimes and misdemeanors"; and nothing less than that can be said in regard to it.

I pass, gentlemen, to the fourth article. That article has attracted more attention in the Senate, if one may judge by the number of question that were submitted to Judge Archbald when upon the witness stand, than any of the other articles.

I shall not undertake to claim here that that which Judge Archbald did on that occasion could not better have been done otherwise. I think it could. But that is not the question. The question here is whether that which he did constitutes a high crime and misdemeanor. And there is no other question than that in it. And unless you find that it does constitute a high crime and misdemeanor, however much you may regret and reprobate that which was in fact done, you must find a verdict of not guilty upon this article.

Let us see what the case is. The New Orleans Board of Trade had suggested and finally instigated proceedings before the Interstate Commerce Commission growing out of freight rates on the Louisville & Nashville road, from New Orleans to Montgomery, by one route through Pensacola and by another route through Mobile. The Interstate Commerce Commission had early adopted for their guidance the rule that if the through rate for freight between two points was greater than the sum total of the local rates between the points that that, if not conclusive, certainly was a most violent presumption to establish the fact that the through rate was an improper rate and ought to be reduced.

When that rule was promulgated the Louisville & Nashville, which was up against water competition as to a part of its route, in order to comply with the requirements of the commission, changed the rates so that the through rate did coincide with the sum total of the local rates. That settled the proceedings for a little while, but later on they were instituted and carried on in the Interstate Commerce Commission, and there were two questions raised in those proceedings; the first related to what are known as class rates and the second to that which are known as commodity rates.

"Class rates," as Judge Archbald explained the other day, means rates upon a number of, comparatively speaking, similar articles. "Commodity rates" means rates upon an individual article, because it is supposed to be more expensive to transport than other articles.

And when the Interstate Commerce Commission came to pass upon the matter they decided only one branch of it. As the papers which related to that were not read when they were introduced in evidence, I think it important, that there may be a proper comprehension of exactly what the situation is, that you may know just what the Interstate Commerce Commission did decide, and I will read now from the concluding clause of their opinion in this case:

In regard to the commodity rates attacked in these proceedings, certain adjustments and changes have been made therein by the defendant since the institution thereof with the view of correcting inequalities or excessive charges found to exist, which adjustments and changes are admitted to have removed the cause of complaint to some extent. It is impracticable in the present state of the record to determine satisfactorily what other changes, if any, respecting commodity rates should be made. These cases will be retained therefore for such further investigation and consideration of commodity rates involved as the facts and circumstances may seem to require.

So that, you see, in the case pending before the Interstate Commerce Commission they decided the question of class rates and they reserved the decision as to commodity rates, and in that aspect of the matter the Louisville & Nashville Railroad filed their petition in the circuit court of the United States, which proceedings were subsequently certified to the Commerce Court at the time of its creation and became the first case in that court.

Of course that petition could only attack the ruling of the Interstate Commerce Commission in relation to class rates, because there was still pending and undecided the question of commodity rates. That is all it did attack. While it was in that shape Judge Archbald told you—and about that there is no dispute—that the Commerce Court, in considering the matter, reached the conclusion that they would sustain the ruling of the Interstate Commerce Commission.

Judge Archbald did not agree with that conclusion and undertook to write a dissenting opinion. In the course of that undertaking he found the particular clause in the testimony which had been quoted—and I am not going to stop to read it, for it is not worth while—by which, judging that by the context, it would appear as if the word "not" had been omitted. And it was in that aspect of the matter he wrote to Mr. Bruce to obtain the fact upon the point, so that he might use it in connection with his dissenting opinion.

It may be said that the elimination of the word "not" was a very important elimination, and in a sense it would be so; and yet, curiously enough, in this record before the Senate we have no less than four instances where the word "not" has been omitted in the printed proceedings, which had to be corrected by calling the attention of the Senate to it, after the reading of the Journal. And it finally appears omitted in the brief which Mr. Manager CLAYTON has filed and that has not been corrected, and the "not" is still omitted up to this day. So it plays very little part whether the word "not" was omitted or whether any other word was omitted.

So if you choose you may say that it was a blunder or mistake, or any word you choose to attach to it, on the part of Judge Archbald not to call attention of counsel on the other side, and also call the attention of the other judges of the court to the receipt of that letter from Mr. Bruce. Call it that if you choose.

Mr. Manager CLAYTON. Will you please give me the page of the brief in which the error to which you have referred occurs?

Mr. SIMPSON. Page 7. I will call attention to the exact point later on if you wish.

The question is not whether that was a mistake on his part, but whether there was an evil motive in that mistake. There can not have been an evil motive in that mistake, because it is an admitted fact in this case, which probably the Senators have forgotten, but which was admitted when Mr. Bruce was on the witness stand, that that letter which was received by Judge Archbald was pasted by him into the record in that case and remains in that record unto this day, and is printed in the paper book in the Supreme Court, where that case is now pending.

Now, can anyone under God's heaven imagine that there could be an evil motive in a man writing and receiving a letter when that man would paste that letter into the record where everybody could see it?

I do not know whether or not that is how the managers found out in regard to it, but that is the fact, and it negatives in the most conclusive way the possibility of any evil motive in regard to it.

The same thing is true, only in a somewhat different sense, of the second letter that Judge Archbald wrote. That letter was calling attention to that which Judge Mack had discovered, or thought he had discovered, of what are known as variations from the Cooley award. But those variations related purely and simply to the commodity rates which had never been decided by the Interstate Commerce Commision, and therefore were not before the Commerce Court.

And so it was that when Mr. Bruce replied to Judge Archbald in regard to the matter, he called attention to that identical fact, and I shall read only a few lines from the letter to demonstrate that:

> Finding that the commission had decided nothing on the subject of commodity rates, but had expressly reserved that subject for further consideration, and that the equity suit filed by the railroad company attacking the commission's order was therefore necessarily confined to the subject of class rates, to which the commission's order was confined, I never attempted to make any investigation of the subject of commodity rates or to make any preparation of the case based upon the consideration of them; and I do not see how any question pertaining to commodity rates can now be before the Commerce Court.

Of course, no such question was before that court, and it was quite unnecessary, however wise it might have been to call the attention of the court to that fact by producing the letter, especially as according to the statement of Judge Archbald the thing became wholly immaterial in the consideration of the case.

But if that thing was something which he should not have done, it was at most a breach of the law of ethics. It was no breach of any known law of the land. It was no more a breach of ethics on the part of Judge Archbald than it was a breach of ethics on the part of Mr. Bruce himself, for he testified, when he was before you, that he did not communicate the facts to counsel on the other side, and he testified also—and it is in this record—that he got a letter from Judge Mack, who was writing the dissenting opinion, and he replied to that also.

I do not know how many Senators there are in this Chamber who know Mr. Bruce. Probably both of the Senators from Kentucky do know him. If they do know him, I am quite sure they will say to you, as one of the Justices of the Supreme Court of this country said not very long ago, that he is one of the very best lawyers, one of the highest-toned lawyers, that ever came to practice at their bar. If a man of that character should commit a breach of the law of ethics, why complain of Judge Archbald and claim that it is a crime that he did likewise?

I want, in that same connection, and closing all that I have to say upon that point, to read to you what was said by Mr. Manager STERLING yesterday. I read from page 1361:

> Do you ask the question, Would you impeach and convict Judge Archbald and remove him from office for his correspondence with Helm Bruce? I speak for myself when I say no; I would not if that stood alone, but it is a part of the system; it is one fact which dovetails into this line of conduct which he has carried on with the railroads, and it is a system so rank that "it smells to heaven."

He may say that as much as he pleases. The point in it, however, is this: That when you come to vote on the fourth article of impeachment you are only to determine under that article as it is expressed whether or not the sending of those letters to and the receiving of the letters from Mr. Bruce, without notice to counsel on the other side, is an impeachable offense.

You can not carry into your decision as to the fourth article anything which relates to any system, if such there be. To do so would contravene the very first fundamental principle of a trial, namely, that a man shall be convicted only of that which is charged against him. And so little did the managers of the House think of it as an element in itself that they did not even include it in their dragnet thirteenth article at all. It is not even suggested there, and hence to claim that it is part of a "system" is simply a claim not to be considered at all.

I pass on to the fifth article. I am afraid my colleague is or should be getting nervous for fear I will use a part of his time.

Mr. WORTHINGTON. Take all the time you want.

Mr. SIMPSON. The fifth article Mr. Manager FLOYD said yesterday he considered was one of the most important of them all. I think it was Mr. FLOYD who made the statement; but if not, it was one of the others, but I think it was Mr. FLOYD. And yet that article is one of the simplest of them all.

The charge in that article is that Mr. Frederick Warnke in 1904 was the owner of a two-thirds interest in certain coal lands owned by the Philadelphia & Reading Railroad Co., and the railroad company forfeited the lease which Mr. Warnke had, and that he afterwards went to Judge Archbald and asked him, Judge Archbald, to intercede with the officials of the Reading Railroad Co., and in consideration of that intercession Judge Archbald received the sum of $510.

Now, that is the substance of that charge. I do not care about taking the time to read it at length.

You will perceive at once, therefore, that all the evidence which was introduced here by the managers which related to the arrangements existing between John Henry Jones and Fred W. Jones, and whatever agreements there may have been between them are wholly immaterial to the consideration of this article. You will perceive also that under that article, unless that $510 note was given as a consideration for Judge Archbald using his influence with the Philadelphia & Reading Coal & Iron Co., it does not make any difference for what it was given. It is not charged to be anyways wrong, if, as the fact was, it was a commission for the sale to the Premier Coal Co. by the Lacoe & Shiffer Coal Co. of the fill known as the old gravity fill, for in that event it is not a subject of complaint in this article.

Let us see what the facts are. It is undoubtedly true that there was an interest which Mr. Warnke had in a lease with the Philadelphia & Reading Coal & Iron Co. It is not questioned here but that he had expended $65,000 to $75,000 in rebuilding the washery and getting ready to wash the coal that was in the dump. It is not questioned here but that the original lease, of which he was the assignee, had a clause in it that if there was an assignment of the lease the Philadelphia & Reading Coal & Iron Co. had the right to forfeit the lease; and there is no doubt but that—cruelly, as I think, though within their legal right—they did forfeit the lease because of that assignment, and that Mr. Warnke lost his $65,000 to $75,000. There is no doubt, also, but that he undertook, through himself and through other friends of his, to induce Mr. Richards, of the Philadelphia & Reading Coal & Iron Co., to reconsider that determination and to try to get back the lease which he had had or to lease to him the Lincoln coal dump, so that he might in some degree recoup a portion of his losses.

There is no doubt but that he came to Judge Archbald, that he told Judge Archbald the story of his losses, and that he asked the judge if he would not go to Mr. Richards and see if he, the judge, could not get for him, Warnke, an interview with Richards, to the end that he might endeavor again to persuade Mr. Richards to yield the point and give him back the washery or give him the Lincoln dump, so that he might recoup his money.

There is no doubt about the fact that Judge Archbald, then being about a visit to Pottsville, wrote a letter, in which letter he said he was coming to Pottsville on a certain day, and he asked Mr. Richards if he could not see him; that he saw Mr. Richards and then put the proposition before Mr. Richards; and that he then for the first time learned that Mr. Richards had been previously importuned to grant that relief to Mr. Warnke, and that then for the first time he also learned that like the laws of the Medes and Persians the rules of the Philadelphia & Reading Coal & Iron Co. can not be altered, and they would not consider anything Mr. Warnke might have to say.

All those things are without any dispute. But is there any crime in that? Is there any wrongdoing in that? It is not even alleged that the Philadelphia & Reading Railroad, or Railway, or Coal & Iron Co. had any litigation pending before any court of which Judge Archbald was a member. That was admitted in the argument made here yesterday.

What they say—and it is one of the most curious arguments I ever listened to—that because in the sale of the gravity fill he did take a commission and wanted to know "why not"; that you might infer from that fact alone that the note which was given to him on this occasion was given to him as a consideration for trying to help Mr. Warnke. This to me is one of the most curious arguments that anyone could bring before any

body of men supposed to be sitting as judges, especially as months of time even had intervened before the note was given.

But there is no evidence whatsoever that that note was given at all for any such purpose. There have been before you no less than five witnesses, every one of whom testified that that note was given as a commission on the sale of the old gravity fill. There is no doubt, because there has been here produced before you the letters by Mr. Berry and others, that Judge Archbald had an option upon the old gravity fill. There is no doubt that he undertook to sell that to the Central Brewing Co., and that they sent and examined it and for reasons satisfactory to themselves said that they would not take it. There is no doubt that the examination which was made for that brewing company was made by Mr. Warnke, and that he became satisfied from the examination which he then made that there was sufficient value in that fill for him to buy it; and that he then entered upon negotiations with Judge Archbald, while he still held that option, for the purchase of that fill.

It is true that while those negotiations went on the original option ran out. There was still, however, the oral option. But whether there was a written or oral option makes absolutely no difference. Under the law of Pennsylvania, whatever may be the law elsewhere, if an agent or commission man brings the parties together and that results finally in a contract, it makes no difference whether that man has anything to do with the final making of the contract, whether his agency ceases in the meantime or no, or what could happen to it, having once brought the parties together resulting in a contract, he has done all that the law requires of him, and he is entitled to be paid his commission.

That is the reason why the commission was paid to Judge Archbald in this case, and that is the reason why he was entitled to retain so much of it as he did in fact retain. Of course, he gave half of it to Mr. Jones, who was interested in the matter with him, and he produced his checks and check stubs showing that identical fact, and it is a conceded fact throughout the case.

Now, I want to know what you are going to do under circumstances such as these with the presumption of innocence to which I heretofore have adverted, and to the doctrine of reasonable doubt, and to the effect to be given to good character, when upon such an argument as was made yesterday by the managers in regard to it you are asked to charge Judge Archbald with crime, as against the testimony of at least six witnesses, without one single word from anybody in antagonism to that which those witnesses have said.

I pass to the seventh article. The allegation in that article in regard to Judge Archbald is that while he was sitting as a judge in the district court—that brings up a new question of law which I am going to refer to in a moment—he entered into negotiations with one W. W. Rissinger in relation to a coal-mining scheme, I think it was in Venezuela, and that while those negotiations were going on he tried the case of the Old Plymouth Coal Co., in which Rissinger was a stockholder, against various insurance companies, and that while also that matter was pending he indorsed a note for $2,500 at the request of Mr. Rissinger and caused it to be presented to Mr. Lenahan, who was one of the counsel for Mr. Rissinger in the trial of that particular suit.

The first question which arises is the one which has been referred to by several of the managers, and was suggested, I think, by the Senator from Idaho [Mr. BORAH] in the beginning of this trial, viz, whether or not the Senate can now consider an article of impeachment which relates to acts done while Judge Archbald was a district judge before his appointment to and confirmation as a judge of the Commerce Court. I shall not take much time to argue that legal question for the reason that all of the articles, beginning at the seventh and running to the twelfth, which deal with this question are articles of comparative unimportance. But inasmuch as the question has been raised, it ought to be considered, and so, briefly, I shall consider it. The managers in their brief say, this in referring to this question:

> In this respect the case here presented seems to be unique in the annals of impeachment proceedings under our Constitution.

And they say further in that regard that they can justify the articles of impeachment, notwithstanding the change of office, because the two offices are substantially the same within the contemplation of the constitutional provisions relating to impeachments.

That argument necessarily concedes the points decided in the Blount case and considered and voted upon in the Belknap case, that he who is out of office can no longer be impeached. It necessarily also concedes that the constitutional provision has for its primary purpose the removal of the delinquent from the particular office in which he is said to have done a wrong. That is the necessary conclusion from the provision of Article I, section 3, of the Constitution, which provides what shall be the penalty in case of impeachment. It is considered also by Judge Story in his work on the Constitution, and I wish to read a paragraph in regard to it, even though it takes a little time to do it. In referring to the clause of the Constitution to which I have adverted Judge Story says:

> From this clause it appears that the remedy by impeachment is strictly confined to civil officers of the United States, including the President and Vice President. In this respect it differs materially from the law and practice of Great Britain. In that Kingdom all the King's subjects, whether peers or commoners, are impeachable in Parliament, though it is asserted that commoners can not now be impeached for capital offenses, but for misdemeanors only. Such kinds of misdeeds, however, as peculiarly injure the commonwealth by the abuse of high offices of trust are the most proper and have been the most usual ground for this kind of prosecution in Parliament. There seems a peculiar propriety, in a republican government at least, in confining the impeaching power to persons holding office. In such a government all the citizens are equal and ought to have the same security of a trial by jury for all crimes and offenses laid to their charge when not holding any official character. To subject them to impeachment would not only be extremely oppressive and expensive, but would endanger their lives and liberties by exposing them against their wills to persecution for their conduct in exercising their political rights and privileges. Dear as the trial by jury justly is in civil cases, its value as a protection against the resentment and violence of rulers and factions in criminal prosecutions makes it inestimable. It is there, and there only, that a citizen, in the sympathy, impartiality, the intelligence, and incorruptible integrity of his fellows impaneled to try the accusation, may indulge a well-founded confidence and sustain and cheer him. If he choose to accept office, he would voluntarily incur all the additional responsibility growing out of it. If impeached for his conduct while in office, he could not justly complain, since he was placed in that predicament by his own choice, and in accepting office he submitted to all the consequences. Indeed, the moment it was decided that the judgment upon impeachment should be limited to removal and disqualification from office it followed, as a natural result, that it ought not to reach any but officers of the United States. It seems to have been the original object of the friends of the National Government to confine it to these limits, for in the original resolutions proposed to the convention and in all the subsequent proceedings the power was expressly limited to national officers.

If the argument which was thus presented by Judge Story is sound, it must necessarily follow that the similarity of the two offices is not and can not be of any moment whatsoever. Can it be said that if a civil officer, say, in the Cabinet of the President, is transferred from one portfolio to the other and continues steadily in office that he may be impeached while holding the second office for that which was done in the first; and yet if he passes from the Cabinet to the Senate or into private life he can not be impeached at all? There is no logic or sound reasoning in any such proposition as that, nor is it in accord with any well-settled principles. In the provision which the managers quote in their brief from Mr. Foster he says this in regard to that:

> It includes such action by an officer when acting as a member ex officio of a board of commissioners, and such action in the same or a similar office at an immediately preceding term.

Now, I want to know why limit it to the immediately preceding term if the similarity of the office is the test in determining whether the impeachment will lie or not. Of course, that can not be sound; and the only reason why Foster wrote in his commentaries the "immediately preceding term" was because he felt that the line must be drawn somewhere. He knew that in certain of the State courts, under the language of their constitutions, it had been held that in a succeeding term of the same office there might be an impeachment for that which occurred in the immediately preceding term. But it remained for the managers to evolve the doctrine that it was to be a substantially similar office which was the test in determining the matter.

I submit that the proper test is the one to which I have already adverted. It is that the office, during the incumbency of which the acts were done of which complaint was made, shall be the determinative factor in deciding whether or not impeachment shall lie for the offense charged. If that is not so, there is no logical conclusion from the position which one of the managers assumed (I think it was Mr. Manager Sterling, though I may be mistaken about that), that so long as the man is in public office, whether the office is substantially similar or no, or whether there is a continuity of term or no—so long as he is in public office he may be impeached for anything which he has ever done in the past because, as it was claimed, the purpose of the constitutional provision is to put out of office all those who by their past lives have shown that they are unfit to occupy it. That position would be a logical one, but there can not be a case found to sustain it; and all the authorities decide precisely the reverse. But, as I said, that is a comparatively unimportant matter, and I pass from it to consider what the real charge is.

That real charge is that Judge Archbald was corrupt in sitting at the trial of that case while negotiations were pending as to a matter in which he was interested, and in causing the

note, while the matter was pending, to be presented for discount to counsel for one of the parties to the litigation. It is impossible to conceive that that can be so. There can not be a corrupt conspiracy unless there were at least two people to it. If there was a conspiracy between Judge Archbald and Mr. Rissinger, will somebody tell me why when those suits were brought they were not brought in Judge Archbald's court? Yet the record which is here produced shows they were not. They were brought in the common pleas court of Lackawanna County, Pa., over which Judge Archbald did not preside.

Can anyone understand why the other party to the suits, the one who was to be injured, should remove the case into the Federal court over which Judge Archbald was to preside if the conspiracy was between Judge Archbald and Rissinger?

Can anyone understand why, if there was a conspiracy between Judge Archbald and Rissinger in regard to the matter, the rulings, so far as they took place, with one exception, to which I will advert in a moment, were all in favor of the other party to the litigation? Yet Mr. Shattuck, when he was upon the witness stand, and he was counsel for the insurance company which was supposed in some way to have been injured, testified that every decision in the case, barring the one, was made in accordance with his suggestions to the court and as against Mr. Lenahan's and Mr. Rissinger's claim.

The one to which I now wish to advert is this: When all the evidence for the plaintiff was in the counsel for the defendant, Mr. Shattuck, moved for a nonsuit, not a demurrer to the evidence, for that is not known to the practice in Pennsylvania, though the legal effect is precisely the same. He moved for a nonsuit, and the court refused to grant the nonsuit. They said it was a case for a jury, and, as Mr. Shattuck said, it was a case for the jury upon a single question, which single question was whether the building which had been burned down belonged to the old Plymouth Coal Co., which was operating the washery, or belonged to the railroad company, which owned the dump, the building having from time to time been altered and added to by the old Plymouth Coal Co. during the course of their washery proceedings.

When they had gone on a little way in the evidence counsel got together and agreed upon a settlement of the case, which was carried into effect. There is no claim here, and it is distinctly denied in the evidence, that Judge Archbald had anything whatsoever to do with bringing the counsel together. It is not claimed here; on the contrary, it is admitted by the managers by an express admission, and it is also testified to by Mr. Lenahan, representing the coal company, and by Mr. Shattuck, representing the insurance company, that the decision which Judge Archbald made upon that point was right; and Mr. Lenahan told you that Mr. Shattuck turned to him after the decision of the case and said to him in substance, "The jig is up," and that he had had no defense whatsoever, and Mr. Lenahan further said to you that there really was no defense of any kind to the case.

Now, I ask whether or not on that state of facts you can find anything wrong as against Judge Archbald? As I said, Mr. Manager STERLING admitted during the trial that every ruling was proper—every one, without an exception.

Oh, but they say Judge Archbald permitted that note to be presented to Mr. Lenahan for discount. Judge Archbald says that he did not. Mr. Lenahan does not say that he did. Mr. Rissinger says that he did not. Indeed, there is a slight dispute between Rissinger and Lenahan as to whether the note was ever presented to Mr. Lenahan. Certainly if it was presented at all it was presented in the most indefinite sort of a way. Lenahan admits he never saw it. Rissinger says that what occurred was that he went to Lenahan, not even having the note with him, and asked him whether he would have his bank discount that note, and Lenahan says, "I said to him 'What do you want it for?' He told me he wanted it for raising money in relation to this mining scheme down in Honduras," or in Venezuela, wherever it was, and that then he, Lenahan, said to him, "Why, I will not go to my bank and discount a note for any such purpose as that. They would laugh me away if I did anything like that, because they will not discount a note for the purpose of using money in any mining scheme of a wildcat nature whatever."

Knowing of the entire failure of their evidence, there was an endeavor yesterday to drag in Mr. Rissinger's testimony before the Judiciary Committee, though it was never even referred to at the trial in this case, and to assert that his stories, as testified to on the two occasions, were wholly at variance. Even if that were so, though there is no evidence to show it, it is inconceivable how Judge Archbald could be affected by it.

There is just one other thing in that aspect of the matter which ought to be referred to. Before the note was presented to anybody, indeed before it was indorsed by Judge Archbald, there had final judgment been entered in the suit about which this complaint is made, five days before that day, and the record which is produced and offered in evidence here shows that fact to be true. Now, I ask, Is Judge Archbald to be charged with some crime or with some wrongdoing because as an accommodation to a friend he indorsed that friend's note five days or any other time after the only litigation in which that friend had any interest was finally settled in his, Judge Archbald's, court? If he is to be blamed for that, will somebody kindly let me know what the statute of limitations upon that point is? I want to know when a judge having disposed of litigation in which a party is interested can for the first time be permitted to have anything to do with that one who had in the past been a litigant in his court. Is it five days or five years or five centuries? In point of fact, the test is, and necessarily must be, the point when final judgment is entered in the case. At that time the judge's function is at an end; the case is over so far as the judge is concerned; and the question is simply one of collection between the parties to the litigation.

I pass to articles 8 and 9, and I refer to them together because they both grow out of precisely the same transaction. Judge Archbald indorsed a note for $500 for John Henry Jones. The eighth article charges him with a crime because he permitted that note to be presented to C. G. Boland and William P. Boland for discount, there then being pending in his court the case of Peale against the Marian Coal Co., in which company the two Bolands were large stockholders. The ninth article charges him with a crime because he permitted that note, or directed that note, if you choose—I am not caring for the wording in regard to it—to be presented to C. H. Von Storch, who some time in the past had been a litigant in his court. That is the gravamen of those two complaints.

It is alleged also in those articles that the note was given for the purchase of an interest in an oil concession in Venezuela.

The facts in regard to those articles can very easily be considered together. There is no doubt that Mr. Jones did have an interest in an oil concession in Venezuela; there is no doubt he came with this note to Judge Archbald and asked him to indorse it, and that the judge did indorse it. Up to that point the evidence is clear. There is no doubt also that Mr. Jones took that note and presented it to his bank for discount, and that that bank refused to discount it because a couple of other notes, upon which Mr. Jones was indorser, had been protested for nonpayment on account of the failure of the maker of those notes. There is no doubt also that Mr. Edward J. Williams, who figures in the first article, then suggested to Mr. Jones that the Bolands would discount the note; that he took it to the Bolands and asked them to discount it, and that they refused to discount it, they, say, upon high moral grounds. I am not going to enter into any controversy as to whether their grounds were good, bad, or indifferent. Williams had the note for three days. He then took it to another bank, and they, for some unknown reason, refused to discount it, and he then returned it to Jones. Then it was suggested that Mr. Von Storch's bank might discount it. T. Ellsworth Davies, I think, was the party who suggested that to Mr. Jones, and Mr. Jones and Mr. Davies then went to Mr. Von Storch, and Davies introduced Jones. Von Storch said, "Leave the note here until I look into the matter." He subsequently called up Judge Archbald on the phone and asked him if it was his note. Finding that it was, he directed that it be discounted. It was discounted, and Jones got all the money.

Those are the undisputed facts. If you add to those the disputed facts they still make no crime. The utmost that can be said in regard to it is that the judge, knowing that the note was to be presented to the Bolands, permitted it to be done. Well, suppose he did permit it to be done. Neither of the Bolands nor Williams nor Jones nor anybody claims that he asked them to discount it, or did the slightest thing in regard to it. He says and Jones says that it was presented to the Bolands without Judge Archbald knowing anything whatsoever about it; and Boland himself says that, though Williams told him that Judge Archbald knew that it was going to be presented, he, Boland, did not know whether that was true or not, and they did not have faith enough in Williams to believe it was true. Judge Archbald says that he did not do that thing, and there you have it. How are you going to build a crime out of that? The Bolands admit that they never spoke to the judge in any way whatsoever about it. It came out in the hearing before the Judiciary Committee as a surprise to the judge, except for the fact that the judge says that at some time, the date of which he can not fix, Jones told him that Williams had presented the note to the Bolands and that they

had refused to discount it. That is the whole case upon that point. Is that a crime?

Is what occurred in relation to Von Storch any more of a crime? Mind you, Von Storch had had a case before Judge Archbald which Judge Archbald had partially decided against him and partially in his favor; but that case had been finally settled nearly a year before—11 good months before—the judgment had been paid and satisfied, and that was the end of that case for good. The docket entries show that to be so. Is there, can there, be anything further upon which you can draw any inference or wrong of any kind or character in regard to that transaction?

It is said, however, in this article that the reason they make complaint against Judge Archbald in regard to it is that he permitted this thing to be done in this way, this presentation of this note to persons who were litigants in his court and to persons who had been litigants in his court, because he knew the note could not be discounted in the usual commercial channels, and that, therefore, you are to draw the inference of wrong in regard to it. They offer no evidence at all upon that point. On the contrary, you will remember that when one of the witnesses was upon the stand—Mr. Ruth, I think—he said that Judge Archbald's credit was perfectly good, and that their bank would be willing to discount his note. You have the facts before you, that whenever a note was presented or wherever it was presented, every note that he did indorse was, in fact, discounted by some bank; and you have his testimony in regard to it and the testimony of two or three other witnesses, Mr. Searle, notably, that his credit was good throughout Scranton at any bank. There was no suggestion, as my colleague suggests, that any note of Judge Archbald's, or any note upon which he was maker or indorser, had ever at any time or under any circumstances been dishonored. I want to ask you, therefore, how you can draw from these facts, which are wholly undisputed, any conclusion that his note would not be discounted in the usual commercial channels? Yet that is the necessary basis of the claim which is being made in these two articles.

I now pass to an article which I confess causes my gorge to rise more than any other article of them all. It is charged in the tenth article that in 1910, while Judge Archbald was a judge of the district court for the middle district of Pennsylvania, he accepted an invitation of Henry W. Cannon to take a trip to Europe at the expense of Mr. Cannon; that at that time Mr. Cannon was a director of or interested in a number of corporations, which are named in the article, which corporations were likely to have litigation in Judge Archbald's court; that Judge Archbald knew that fact, and that, therefore, it was a misdemeanor on his part to accept that favor from Mr. Cannon.

Now, what are the facts touching that article? They are wholly undisputed, and they were admitted yesterday, I think, in the argument of Mr. Manager STERLING, to be wholly undisputed. The fact is that Mr. Cannon is a first cousin to Mrs. Archbald; that they were reared together; that the closest friendship had existed between them from the time of their childhood down to the present time; that Mr. Cannon some 10 or 12 years ago had begun to withdraw from active business; that he had purchased a winter place in Italy, where he was in the habit of going from time to time; that he had on repeated occasions before this requested that Mrs. Archbald should go with him and spend a portion of the winter in that home; that they had been unable to make the arrangement; and that now the time had become ripe. So Mr. Cannon wrote a letter, which has been offered in evidence in this case, in which he suggests that Mrs. Archbald shall go with him and spend a portion of the winter in that home in Florence, with her daughter or her son, or, as he says in the letter, if the judge can go, better still with the judge. They accepted that invitation; they went to Florence; they spent several months on that trip; and it was all at the expense of Mr. Cannon. The judge says—and no one contradicts it, for the managers were absolutely silent on that point—that the only corporations which Judge Archbald knew that Mr. Cannon was in any way connected with were the Great Northern Railroad and certain corporations on the Pacific coast.

Now, I want to know how, in the first place, the Great Northern Railroad, or any corporations on the Pacific coast, were likely to become litigants in the middle district of Pennsylvania. I want to know, even if they were likely to become litigants in the middle district of Pennsylvania, how that fact could deter Judge Archbald from accepting that invitation at the hands of his wife's relative, when there is neither allegation nor proof that he ever sat in any case in which Mr. Cannon was interested, or that any corporation in which Mr. Cannon was interested had ever had a case in his court or was ever likely to have one in it. Why should the managers, for the purpose of this article, charge that there was likely to be such a case? Of course they were bound to charge that, otherwise the article would fall of its own weight.

I want also to know what difference there is whether a judge of a court accepts an invitation from his wife's relative to spend a portion of the winter in Florence or whether he accepts that invitation to spend a week end in Philadelphia or in Washington or in Scranton or anywhere else. When a man becomes a judge, is he required to at once withdraw from all the social amenities of life with his and his wife's relatives, because, perchance, they may become litigants in his court? Is he compelled to ostracize himself from all his relations because of that possibility? Yet that is the gravamen of this complaint; and unless that is in it there is nothing in it. Judge Archbald had a perfect right to do just exactly what he did; and there is in the Revised Statutes of the United States an exact provision to meet such a case, viz, for the calling in of another judge to try such a case should it ever arise.

I do not believe—if I may follow the bad example set by the managers yesterday of expressing my own belief instead of arguing from the evidence—I do not believe that Judge Archbald would have sat in any case in which Mr. Cannon was interested if it had come into his court, whether he took that trip to Florence or whether he did not; but the wrong, if any there was, would have been in sitting in the case under such circumstances; and there is no pretense that he ever did so or ever had the opportunity to do so.

So, when he had a wife who had been sick as long as Mrs. Archbald had been, and when, as she testified before you, not only her happiness but her comfort would be so greatly enhanced if he could go along, because he knew just what to do when her troubles came—was he to stay away and let her go alone in that condition or be charged with crime because he went? If there is a man in this Senate who thinks there is the slightest element of a crime in that he has indeed a strange idea of the position of men in this world.

I pass to article 11, which is termed the "purse article." It appears that when Judge Archbald was starting on the trip to Europe, to which I have already adverted, Judge Searle, of Wayne County, Pa., handed him a sealed envelope. On the outside of that envelope was written, "Hon. R. W. Archbald. Sailing orders: Not to be opened until two days at sea." Judge Archbald, when it was presented to him, said to Judge Searle, "What does this mean?" The response came: "A good sailor obeys orders." That letter was opened by Judge Archbald after the vessel had sailed, and then for the first time he learned that there was in it a sum of money contributed by a number of lawyers and ex-lawyers living in his district as a gift to him. He could not then return the money. He had to do one of two things, and Mr. Munson very accurately stated the difficulty under which he was placed by that situation, though Mr. Munson himself did not contribute for reasons which were satisfactory to him. I desire to read from Mr. Munson's testimony, because it explains quite accurately the position in which Judge Archbald found himself:

Q. Will you tell us why you declined to pay the money?—A. I had then, and still have, a high repect and admiration for Judge Archbald and I did not care to embarrass him to either accept or refuse it. That was my reason.

Q. You thought that no matter which course was taken he would be embarrassed in either aspect of it?—A. I thought so; that he would be very much embarrassed. I want to say, if I may be allowed to say it, as I said before, that I have tried many cases before Judge Archbald, both when he was a State judge and when he was a Federal judge. He was always absolutely impartial and fair and I have never tried a case before a more honorable, upright judge than he. I have regarded him as my friend. I knew him when he was a lawyer. He was my correspondent in Scranton. I have tried cases before him for 25 years.

And Mr. Sprout, when upon the stand, testified that when Judge Archbald acknowledged to him the contribution which he made, the letter which was written showed that the judge was very much embarrassed by the situation in which he was placed. What could he do? If he had returned that money, he stood in the position, practically, of slapping every one of those men in the face; he stood in the position, practically, of saying to them, "You have wrongfully endeavored to give me a sum of money; the wrong is yours, and therefore I return this money to you." Would any man want to do that? Most certainly not.

The wrong which was in fact done was, as has been expressed by at least six of the witnesses who testified in regard to this matter, the wrong of Mr. Edward R. W. Searle, who, in violation of that which was arranged, put in the letter which was sent to Judge Archbald inclosing that money a list of the names of the contributors. If that had not been done, if it had been simply a gift of money, certainly nobody could have been heard here to complain. But even then it is a difference

in degree and not in kind whether, when a judge is about to sail abroad, there is sent to him a gift of money, such as there was in this case, or a gift of flowers or of books or of anything else.

I ask whether or not it would be suggested or thought that there was any wrong in the sending or the reception of such gifts as those when a judge travels abroad? I do not suppose you would have ever heard of it under such circumstances, but because the gift happened to be money, instead of other things of value, the charge is made that it is a criminal offense. If it were followed by evidence suggesting in the slightest degree that Judge Archbald had shown any favors to anybody by virtue of that gift, or if it were suggested here, even in the slightest degree, that there was a thought in his mind when he accepted it that he was in duty bound to show or that he would show favors to anybody by reason of that gift, then there might be some slight basis for that which is here charged against him; but there is neither allegation nor proof of that; and in the absence of allegation and proof, you certainly can not say that an upright judge, admitted by the managers to be such, is to be charged with crime upon suspicion under circumstances such as I have thus stated to you.

I pass, Senators, from that to the twelfth article, the last that I shall be called upon to consider. That article charges that Judge Archbald committed a misdemeanor, because he appointed J. Butler Woodward jury commissioner of the middle district of Pennsylvania, Woodward at that time being a railroad lawyer.

I confess, in view of what has occurred in this trial, that I am left in some doubt as to exactly what the managers do mean by that charge. When I offered in evidence the list of jury commissioners in all of the judicial districts of this country, Mr. Manager CLAYTON arose and objected to that list, because, as he said, the complaint against Judge Archbald was not that he appointed a lawyer as jury commissioner, but that he appointed a railroad lawyer. But when the case was being argued yesterday Mr. Manager STERLING said that the complaint was not that Judge Archbald appointed a railroad lawyer as jury commissioner, though that is what is charged in the article itself, but that he appointed somebody as jury commissioner who was especially engaged in trying one particular class of cases before the court of which he was jury commissioner. You, of course, can not reconcile those statements, but the irreconcilability becomes a matter of considerable indifference when it is found, as the fact is, that Judge Archbald did not even know at the time of the appointment that Mr. Woodward was a railroad lawyer, and when it appears, not only from Mr. Woodward's testimony at this bar, but from the certificate of the clerk of the middle district of Pennsylvania, that during the 10 years while Judge Archbald sat upon the bench of the district court there were but three cases of that railroad and its allied coal companies in that court; that in two of those cases Mr. Woodward was not counsel at all; and in the one in which he was counsel it was not tried at all, but, being a technical case, was submitted to a referee by agreement of the parties. It so happens also that in all of the districts of Pennsylvania—the eastern, the middle, and the western districts—the jury commissioners are lawyers.

It is stated in some of the letters which were produced here and finally offered in evidence that it is not shown that they were railroad lawyers. Of course it is not shown that they were railroad lawyers, but neither is it shown that they were not railroad lawyers. The utmost to which the letters go was the statement made that they were not regularly employed by railroad companies.

Now, I want to know what Judge Archbald's duty was when he came to appoint the jury commissioner. We have an act of Congress that stipulates that duty. That act of Congress provides that he shall be "a citizen of good standing, residing in the district," and "a well-known member of the principal political party opposing that of the clerk of the court."

Was Mr. Woodward that? Everybody admits that he was. Was he of a different political party from the clerk? No one questions that. He was a Democrat, as his father and his grandfather had been before him, and, if I may again follow the bad example of the managers in expressing my own knowledge and belief, his is one of the best-known Democratic families that Pennsylvania ever had or ever will have. He is a man of as high character as ever sat in any tribunal, I care not where the tribunal is. I ask the Senate whether or not Judge Archbald is to be complained of because Congress has not put into the law another requirement in relation to jury commissioners, and whether he is to be complained of because he strictly follows everything that Congress requires, especially in the light of the fact that there is no complaint whatsoever of any wrongdoing at any time by Mr. Woodward? On the contrary, we find Mr. Manager STERLING, in his argument before you yesterday, saying this:

> Aye, gentlemen, do you ask the question, Would you remove Judge Archbald for appointing Woodward jury commissioner when it is not proven here that Woodward ever exercised his power wrongfully? Do you say now, honor bright, would you remove him from office for that? No; I would not if it stood alone, but it is a part of the system; it goes to make up the system; it is an incident in the line of misconduct which has been carried on by Judge Archbald.

Yet in the article which we are now considering there is no suggestion of a system of wrongdoing; and in the thirteenth article, which was the dragnet to draw everything else in, there is no suggestion of a system, so far as the jury commissioner or anything appertaining to that office is concerned. Unless Senators are going to violate their oath of office, they can not possibly under this article convict Judge Archbald, because there has been disproven everything which is alleged in the article, and admittedly none of those allegations are true.

It was said by Mr. Manager STERLING in his argument that the portion of the Constitution relating to impeachment was on trial in this case. I do not know, I never can know, how that can possibly make any difference to men sitting as judges. If you are to decide this case according to the known law of the land, what odds does it make whether that portion of the Constitution relating to impeachment is on trial or not? I think with him that it is on trial; but that which is on trial is the determination of the question whether Senators, who ordinarily sit in a legislative or an executive capacity, can rise to the office of judge and judicially decide the questions which are before them, or whether they are to be moved by appeals to passion and prejudice; whether there is to be invoked here a claim that Judge Archbald has done something not in violation of the law of the land, but in violation of a system of ethics which has not yet found its way into the law of the land; whether a court is to decide a case, not upon the law, which is its only guide, but upon other things which have no place in the law at all.

In that aspect of the matter the portion of the Constitution relating to impeachments is on trial; and if this court is going to say that a man shall be turned out of office, although he has violated no law; although, admittedly, every decision that he rendered has been rendered uprightly; although he has never been partial; although he has been able and industrious and just, then you are turning back the hands of the dial of time until you reach the place where, three or more centuries ago, the House of Lords, at the behest of the House of Commons, turned men out of office simply because they did not agree with them politically.

That is the sense in which the article relating to impeachments is on trial.

I want to know what could Judge Archbald do if these articles are to be sustained? The ninth article charges him with a crime because he had business dealings with a man who had at some time in the past been a litigant in his court. The second article charges him with a crime because he permitted a note to be presented to a man who was a stockholder in a corporation which was then a litigant in his court. The tenth article charges him with a crime because he accepts a favor from a man who at some time in the future may be a litigant in his court. The past, the present, and the future are all closed to him under those three articles. What is the man to do? Can he not buy a suit of clothes because at some time the man who keeps the clothing store may be a litigant in his court? Can he not order his dinner in a restaurant of a proprietor who at one time in the past had been a litigant in his court? That is the tendency and the necessary result of those articles.

I suggest to you that there never has been a time when a man was ever convicted in any court of impeachment anywhere under such circumstances as those. I had always supposed—I know it is true in my great State—that when we find a judge who has been impartial, whose integrity stands admitted, not even challenged, who is able, who is industrious, who has been all of a man—when we find such a man occupying a judicial position we want more of him. For such a man we have encomiums, not blame. However great the mistakes he has made, to his virtues we can be very kind, and to his faults we can certainly be a little blind.

It is highly probable that the case you are now called upon to decide would never have been before you but for the unrest of the times. I mean the political unrest of the times. I am not complaining of that unrest. Make no mistake about that. I am a part of it. I believe the unrest of the times ever leads to higher things. But the unrest of the times does not necessitate the carrying back of this court to the days of the Roman

arena, when, because the populace cried out for a victim, the thumbs were turned down. The unrest of the times does not carry back this court to the time of the Savior, when, though Pilate found no fault in Him, because the populace cried "Crucify Him!" "Crucify Him!" He was sent to His death.

That is not what the unrest of the times does. The unrest of the times lops off a wrong here and a wrong there and a wrong yonder, and leads the people up to the point where when they look back, despite all the errors in the intervening steps, they can say, "We have moved up a step higher in these intervening years," or months or days, and ofttimes hours. But it asks no victim at any man's hands, and least of all does it ask a victim from a body of men who are acting as judges. What would be said of any other court than this if, yielding to passion or prejudice or innuendo or anything of that kind, they condemned any man on evidence such as is presented here? And it is in no way to the honor of this court that you are asked to do a thing that none of these managers, I venture to assert, would ask of any other court in this land.

It has been only a very few days since we heard the Christmas chimes ringing "Peace on earth, good will to men." It requires very little imagination in this Chamber at this moment to still hear those chimes ringing. But is there any peace on earth, can there be any peace on earth, to Judge Archbald, can he feel good will to any man if from evidence like that which has been presented here he is to be branded as a criminal and thus sent out into this world? I can not believe that those bells have chimed good will to men in vain. I can not believe that in the highest court which this land knows—in the Senate of the United States sitting as a court for the impeachment of Robert W. Archbald—they will so far forget all the rules of law, all the rules of justice, so far ignore all the well-known laws of the land, as to say that a man who has admittedly violated none of those laws shall be punished because he blundered, I care not how much he blundered.

Over in the State where I come from there are regrets everywhere within its borders that Judge Archbald ever went on the Commerce Court bench. There never has been a day in my time since I have been at the bar that we would not gladly have him in any of our courts, and we would gladly have him to-day. Do you suppose that if he could have at your hands what every other person charged with crime gets in every other court in this land, a trial by an impartial jury of the vicinage, there ever could be a conviction? Do you suppose that in Scranton, where he has been known for fifty-odd years now, you could find 12 men to convict him? If you do, you suppose wrongly. You could not garner them—with all the hate and with all the spite and with all the mistakes that W. P. Boland has shown in this case—out of the middle district of Pennsylvania. No; not five of them. You would have greater trouble than the prophets to save the cities of Sodom and Gomorrah from the hand of the Lord. But because he can not be tried, in the nature of things, before an impartial jury of his vicinage, does that furnish any reason why the character evidence, the necessity for which grows out of that impossibility, should not be given all the weight that would be given to it by the vicinage itself if he could be tried there?

In the early days when a man was put upon trial for crime his neighbors sat as his triers. They knew whether he was likely to commit a crime; they knew whether his accuser was likely to be a truthful man, a biased man, or a lying man, and they judged the case accordingly. Judge Archbald is deprived of that in the nature of things. But he has brought before you character evidence of so great a height that no man could ever hope to attain to a higher one.

There has been upon this stand testifying before you the chief justice of the Supreme Court of Pennsylvania, who has known Judge Archbald for thirty-odd years. There has testified from that stand before you the presiding judge of the superior court, who has known Judge Archbald equally long. There has testified before you the presiding judge of the circuit court of appeals, with whom Judge Archbald sat at times and who at other times passed on Judge Archbald's rulings in the district court. And they all told you that Judge Archbald's character is of the highest. There are three men than whom there are no better living in the whole State of Pennsylvania, and those men come here and tell you that in their judgment Judge Archbald is incapable of crime. Incapable of crime! My God, what better can be said in any tribunal or any court. Incapable of crime! And yet you are asked upon suspicion alone to convict him as a criminal and turn him out of the office which for 28 long years he has graced, and in which no man has said that he has ever done wrong to any one. That is the man you are asked to convict. And you are to convict him under a Constitution which says that except for "treason, bribery, or other high crimes and misdemeanors" he shall not be displaced from his office. When it is done, if it ever is, I will believe it, but there rests not in the power of men sufficient to convince me that this Senate will ever do such a thing, for it seems to me that it would not only be a disgrace to the Senate, but it would be a disgrace to our land, which has ever endeavored to foster and to sustain judges who are of high judicial integrity and impartiality, and who are admitted to be so before those who are asked to condemn them.

ARGUMENT OF MR. WORTHINGTON OF COUNSEL FOR RESPONDENT.

Mr. WORTHINGTON. Mr. President and Senators, the questions of law which are raised in this case and to which I propose in the first place to address myself have assumed an importance greater than we could have anticipated and greater than any which have heretofore arisen in any impeachment trial before this body.

It has been insisted here in the arguments which have been made by the managers on the part of the House of Representatives—not once, not twice, but nearly a dozen times—that the question of Judge Archbald's guilt or innocence is to be determined by what you individually consider to be an offense which justifies his removal from office; not that he has been brought here charged with anything of that kind; but having been brought here charged with certain specific offenses for which he and his counsel have prepared themselves and have summoned their witnesses, he is now to be disgraced and forever branded as a criminal because you may find that he is not fit to be a judge.

I might humbly suggest that if there is ever to be presented to this great body the question whether or not you have the right to impeach an officer of the United States and remove him from his office because you think that on general principles he is not fit to hold his office there might be presented an article of impeachment which would charge that that was the case and that he and his counsel might be prepared to meet it. But instead of that we have him charged with a certain number of specific acts, and when he comes here to meet those and the evidence is closed and the verdict is about to be reached, then we are told for the first time that you individually—each for himself—are to decide whether upon what you have heard here in evidence you think that on general principles he ought to be ejected from his office.

I have not overstated in the slightest degree the proposition that is presented. I need not dwell upon the importance of it, because, if it be so, then not merely Judge Archbald, not merely all the district and circuit judges of the United States and the Justices of the Supreme Court who sit in this building, but the President of the United States and every civil officer of the Government holds his position by the same tenure.

I may say I think it is a very serious question whether you do not yourselves hold your offices by the same frail right. It never yet has been determined whether or not a Senator of the United States is a civil officer of the Government within the meaning of the impeachment clauses of the Constitution. The question was raised in the Blount case, but as he had ceased to be a Senator at the time of his impeachment, it could not then be decided.

But the same Constitution which speaks of the impeachment of civil officers of the Government says that one of the penalties which you may inflict when you impeach an officer is that he never thereafter shall hold any office of honor, trust, or profit under the Government of the United States. And if you be not officers of the Government of the United States—if the position which you hold be not that of an officer under the Government of the United States—then you can here impeach an officer and remove him from office and provide that he never shall hold any civil office under the Government of the United States, and yet he can be elected to the Senate and sit with you, although he would not legally be fit to hold the office of justice of the peace in the District of Columbia or that of a postmaster at any place in the United States.

So, I think it is a question—certainly it may be a question—whether the Members of the House of Representatives, as well as the Members of this body, hold their office by the privilege of the individuals who happen to compose the Senate at any time and who for any reason may think it a proper thing to remove a person from his office.

That being so, I think it is well to group together the provisions of the Constitution on this subject. I know how wide a range this argument has taken, and how wide a range it has taken when similar questions have arisen, and I may have to follow briefly the lines discussed in previous cases. But to my mind it is utterly unnecessary to go beyond a single clause of

the Constitution of the United States to determine that question, and that is the one which has been so often read in your hearing, which says that civil officers of the United States may be impeached for treason, bribery, or other high crimes and misdemeanors.

If this discussion had originated now for the first time and if this were the first time that that sentence was heard by the members of this body, I should like to know whether there is one of you to whose mind it would ever have occurred for a moment that it meant anything except an offense punishable in a court of justice. I do not like the word "indictability," because a great many crimes are punished by information and not upon indictment. When I use that term I mean it in the sense of punishment in any way in a criminal court.

Now my friend Mr. Manager STERLING when he read certain provisions of the Constitution at the outset of his argument said those were all that were necessary to be considered in this matter. He omitted two of them which to my mind are at least as important as any others and which of themselves should be decisive if the one I have cited does not conclude the question.

Section 2, Article III, paragraph 3, says:

The trial of all crimes, except in cases of impeachment, shall be by jury.

"Trial of all crimes except in cases of impeachment."

Again the fifth amendment to the Constitution says:

Nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself.

Would anybody suggest that if Judge Archbald should be acquitted by you, the House of Representatives might legally again find articles of impeachment against him for the same offense? Would anybody suppose that if he had not chosen to take the witness stand in his own behalf the managers could have dragged him there and compelled him to testify?

I may mention in passing that this is the first time in the history of the United States when a respondent in an impeachment case ever has taken the stand in his own behalf.

And so the sixth amendment says:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Where is the man in this United States of America who would suggest that Judge Archbald could be required to answer without being informed of what is the accusation against him? Where is the man who would suggest that it is not necessary to confront him with the witnesses against him? Where is the man who would say he is not entitled to have subpœnas issued to bring his witnesses here to testify for him? Where is the person who will say that you could turn his counsel out of this Chamber and say he has to defend himself? Why? Because it is a criminal prosecution, and if it be not a criminal prosecution then it is nothing known to the laws of this land.

Now, it so happened that in the formation of this Constitution of ours this happened. I am reading, for convenience, from first Foster on the Constitution, page 508. It is simply a quotation from the proceedings in the Constitutional Convention:

Col. MASON. Why is the provision restrained to treason and bribery only? Treason, as defined in the Constitution, will not reach many great and dangerous offenses. Hastings is not guilty of treason. Attempts to subvert the Constitution may not be treason, as above defined. As bills of attainder, which have saved the British constitution, are forbidden, it is the more necessary to extend the power of impeachments. He moved to add, after "bribery," "or maladministration." Mr. Gerry seconded him.

Mr. MADISON. So vague a term will be equivalent to a tenure during pleasure of the Senate.

So they struck it out and put in, instead of the vague term "maladministration," the term "other high crimes and misdemeanors," and now at the end of 125 years after that was done in that convention the managers of the House of Representatives come here and tell you that the provision as it stands means that Judge Archbald shall be turned out of his high office at the pleasure of the Senate. Nay, it is not at the pleasure of the Senate. It is more than that; it is at the pleasure of the individual Senators. You do not, under their construction of this language, have to decide anything as a Senate, but you may have a vote of the Senate of "guilty" or "not guilty," and if anybody thinks the judge is not sufficiently good looking to be upon the bench he may vote against him for that reason. To use the language of one of the managers—on what ground I know not—if he has a large and expensive family you may vote against him for that reason.

As to these articles of impeachment, there may not be 10 votes in favor of turning him out as to any one, but on the whole Senators may combine their votes and turn him out!

And remember also, Senators, that when this Constitution was created there was the well-known form of removing all civil officers—judges and others—by what was called the address. That was referred to by my brother Simpson. It became the law of England in 1701. By it, without making any charges which would involve disgrace upon the part of an individual officer, if it was thought a good thing to turn him out, the Houses of Parliament could request the King to remove him. That provision was carefully left out of the Constitution of the United States, so that no such power exists.

Now, under the constitutions of the different States it is otherwise. They have seen that an impeachment for high crimes and misdemeanors does not allow an officer to be turned out of his office simply because it is thought on the whole he had better be turned out—that he is not a fit man to be in office. The States have almost universally provided for removal by address.

I happen to have in my hand a copy of an address delivered before a bar association in Oklahoma by a Member of this body, Mr. Senator OWEN, in which he has collated the laws of the different States on that subject; and it shows that nearly all of them have the provision for removal by address.

In an article written by the same distinguished Senator, published in the Yale Law Journal for June, 1912, he expresses the idea which is in my mind and which I have undertaken to state here.

Impeachment—

He says—

is wholly inadequate for practical purposes. It can only be invoked for the most serious crimes.

In another place in the article he says:

Impeachment is too severe a remedy in certain cases and is impracticable for offenses justifying removal but not deserving impeachment, which latter power should only be invoked for actual personal corruption or serious criminal conduct.

Nobody could better have expressed our idea as to what is the meaning of the Constitution than Senator Owen has done in that phrase.

But let me go on with another provision of the Constitution. Article I, section 3, paragraph 7, provides:

Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment according to law.

With what assurance can the learned managers stand before the Senate and say, in view of that provision, that a man may be removed from an office for that for which he could not be prosecuted in a criminal court?

Finally, and most important of all, is this provision:

Section 2 of Article II of the Constitution provides—

The President * * * shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

A man may commit the most diabolical murder, commit burglary, or rob the United States Treasury of a million dollars or commit any other enormous offense which violates the laws of the United States, and the President of the United States can make his record as white as snow by saying: "I pardon him"; but if you convict Judge Archbald of high crimes and misdemeanors, as you must if you convict him at all, because of these things he has done which it is said are improper, you have put him in a position where he never can escape from the penalty of his action. Nobody can relieve him. He must carry it with him all his life. It will make for him a winding sheet to take with him into his coffin. It will stand here as a record against his children and their descendants as long as this Government of ours shall endure.

The managers say that this is not a criminal matter; that it is merely a little civil proceeding by which to get rid of an officer who you think ought not longer to occupy the position. That applies not to Judge Archbald alone but to every civil officer of the Government. If the President of the United States should happen to do something which you may consider to be an impropriety, there is no means of removing anybody except by impeachment for high crimes and misdemeanors, and you can remove the President of the United States and put him out of office on such futile and uncertain grounds.

I have referred to the language of the Constitution and to what happened when it was formed. Is is said, however, you must be governed by the English view of this subject; that while our fathers had determined that they would get rid of the tyranny of the Parliament and the King when they framed this Constitution of ours, we are to go back and see how they exercised their tyranny and act accordingly in enforcing our Constitution. I say that you are not at liberty to accept the Eng-

lish precedents. It so happens that I have in support of that contention a notable and learned opinion delivered in the Supreme Court of the District of Columbia, sitting in general term about 30 years ago.

You all remember that when President Garfield was murdered by Charles J. Guiteau the wound was inflicted here in the District of Columbia, and the President was taken to the State of New Jersey, where he died. Guiteau was indicted here for the crime of murder, and under the Constitution of the United States Guiteau was entitled to be tried where his crime was committed. The English precedents were that a man can not be tried for murder in any county in England unless his victim had died in that county. Numerous decisions of the English courts to that effect were thrown upon the table and shown to the judge by Guiteau's counsel. Mr. Justice James, a most able judge, one of the ablest who ever sat in this District, delivered that opinion, an extract from which I shall here ask to have incorporated into my remarks, in which he said that we are to determine the meaning of the phrases in our Constitution according to our understanding of the Constitution and that you can not look to alien laws to see what our forefathers meant in framing a government for ourselves. I will not undertake to dwell on that or to read it here, but I shall insert it at this place in my argument.

We turn, now, to the peculiar and higher ground on which we conceive this question should stand, and to considerations to which as a court of the United States, exercising the judicial power of the United States, we are required to give special attention. However proper it may be that the courts of the States where the common law exists should treat the question of jurisdiction from the standpoint of that law, that question must be treated by the courts of the United States, wherever a fort or magazine or an arsenal or a district of country is under the exclusive jurisdiction of the National Government, from the standpoint of Federal authority and with reference to the relation of the crime to the sovereignty of the United States.

We take it to be a fundamental rule of construction that an independent and sovereign government is always to be understood, when it makes laws for its own people, to speak without any reference to the law of another people or Government, unless those laws themselves contain plain proof of a contrary intention, and that, when it thus appears that something is actually borrowed and embodied therein from the laws of another people, the extent of that adoption is to be strictly construed and not enlarged by implication. So far as its laws can be understood only by reference to foreign law, that reference is authorized by the lawmaker, because it is necessary; but so far as its commands may be understood as original terms, and without such reference, they must be construed independently. It is only when understood to be, to this extent, the original expression of its own will that its words can communicate to its own people the whole and self-sufficient force of that will. To assume, without plain necessity, that it utters the intention of an alien law, is to ignore to just that extent its absolute independence of existence and action and will.

By the argument which is made here by the managers as to the proper way to construe our Constitution by referring to English precedents and customs as they stood when our Constitution was formed, Charles J. Guiteau would have gone unwhipped of justice, for he could not have been punished either in the District of Columbia or the State of New Jersey, for such was the state of English decisions, strange as it may seem, at the time we separated from the mother country.

But what of it? I say that if we go back to English precedents you will find the situation to be precisely the same as we claim it is here under the plain language of our Constitution. You may not go back to the days when it was forbidden for a man on trial before the House of Lords to have counsel in his defense, when he was not permitted to testify; and when after he had been convicted he was not merely to be removed from office, but if the House of Lords chose he could be taken to the block and he could be disembowled and his bowels held before his face before he was dead. I do not understand that the managers expect us to go back to those days to find precedents to govern your decision.

And if you will take the later cases you will find that the doctrine is laid down exactly as we are seeking to lay it down here, that if you want to punish a civil officer for a crime against the law you may impeach him, but for anything else you must seek the remedy by address. Even as far back as 1724, in the case of the Earl of Macclesfield, reported in Howell's State Trials, you will find the whole contention from the beginning to the end in that case was whether the things which the Earl of Macclesfield was charged with doing were crimes. The managers labored, and successfully labored, to show that what he was charged with doing was an offense at the common law and was an offense under certain statutes which they cited.

The case of Warren Hastings, of course, must be adverted to in this connection. I have seen it claimed by some that what he was charged with did not amount to crimes. In other equally able and important statements by learned writers it has been shown that his alleged offenses clearly did amount to crimes. But what matters it? I do not understand, as the managers seem to, that when you find that a person has been charged in a court with a certain offense that that is a decision that that thing is a criminal offense. I do not understand that merely because a man has been charged in articles of impeachment with doing certain things that alone determines that those things are impeachable offenses. You look to the action of the court, and when you find a case in the later days in England, in the last century before we separated from her, or in the United States, where a man was charged in an article of impeachment with doing something that was not a crime against positive law and was convicted, then you will have a precedent which you can cite here against us; but you can find no such. In the case of Warren Hastings, which, as we all know, dragged along, being heard from time to time for seven years, so long that a great many of the members had gone out of the House or had not heard enough of the evidence to justify them in voting, out of the large body of the House of Lords only 29 members voted, and the worst vote against Mr. Hastings on any article was 6 for conviction and 23 not guilty. So if that case decides anything it decides that what he was charged with was not a crime.

But most important of all is the case of Lord Melville, in 29 Howell's State Trials, page 1417, the last impeachment trial in England, which occurred in 1806. In that case Lord Melville had been the treasurer of the navy, or he had been in such a position that he handled the public funds belonging to the navy of Great Britain, and some alleged misuse of those moneys formed the basis of the charge against him in the several articles of the impeachment. It appeared that he had taken the money out of the treasury and deposited it in some private place. His claim was that he did that merely for convenience, not with the intent of converting the money to his own use. The question was, Did that amount to a criminal offense? The House of Lords referred that question to the law Lords, who gave their opinion, as you will find at the page I have referred to, saying that the things charged did not constitute indictable offenses, and thereupon Lord Melville was promptly acquitted.

Now, Senators, what has taken place in this country in this regard is no less conclusive. The case of Senator Blount in 1798 is referred to. You can not tell anything about what the judgment of the court in that case would have been upon the merits, because he had been expelled from the Senate; and when the articles of impeachment were presented he made no reply to the merits at all, but counsel said, "You can not impeach a Senator, and, besides, he is out of office." Upon that double plea the Senate voted—14 to 11—that it set forth a good defense, and there were no further proceedings in the case.

Then came the case of John Pickering, by which one of the learned managers—Mr. Manager HOWLAND—this morning had some pleasantries at my expense, in which there were three articles of impeachment, two charging him in the performance of his duties upon the bench in a prize case involving the question of the custody of a certain vessel of deliberately, by his orders in the court, violating acts of Congress prescribing his duties as a judge. Of course, that was a criminal offense. But the thing which was in the mind of Mr. Manager HOWLAND is this: He said that in the opening statement I made here I said intoxication was a crime. I said nothing of the kind. If my friend will turn to the opening statement he will find that he is greatly mistaken. I said that when a man becomes intoxicated in a public place and acts in a disorderly manner it is a well-known crime everywhere in the United States and in every civilized country, I suppose, on the globe. The charge was first as a preamble that Judge Pickering was in the habit of getting intoxicated, and then that he had gone upon the bench in a drunken and intoxicated condition and deported himself in an unseemly manner and had there, in open court, used the name of the Divine Being profanely.

You may go down to our police court or any police court in the land and you will find a large portion of the cases are for drunk and disorderly conduct. Of course, that would not ordinarily be considered an indictable offense, or that even a Federal judge could be turned out of office if once in a while he happened to get on a slight spree. Yet it is a high misdemeanor within the very terms of the provision of the Constitution when a judge goes into court in a drunken condition and there uses the name of God in vain or otherwise conducts himself in an indecent manner. I beg the pardon of the Chair for even supposing such an illustration; but what would you say if a Senator who happened to be presiding in this body would come here, and when the proceedings are opened take his seat in the Presiding Officer's chair, drunk, unable to conduct himself in a seemly manner, and swear and curse in the face of the public here? Would anybody say that that is not an offense for which he might be taken down to the police court and punished?

Then comes the case of Samuel Chase as to which one of the learned managers has followed what is said in the encyclopedia.

It is the first time in a case of this kind that anyone has asked the Senate to be governed by an encyclopedia or a dictionary. In the American and English Encyclopedia it is said that in one of these impeachment cases the counsel for the respondent first raised the defense that the offense must be an indictable one, but abandoned it. That reference could only be to the case of Judge Chase. I have all that was said by the counsel for Judge Chase in that trial upon that subject, every word of it from beginning to end, and I shall ask to have the privilege of incorporating that at this point in my remarks, and will not take up your time with reading it.

Mr. Hopkinson:

Misdemeanor is a legal and technical term, well understood and defined in law; and in the construction of a legal instrument we must give to words the legal signification; a misdemeanor, or a crime, for in their just and proper acceptation they are synonymous terms, is an act committed or omitted, in violation of a public law, either forbidding or commanding it. By this test let the conduct of the respondent be tried, and by it let him stand justified or condemned. * * * We have read, sir, in our younger days, and read with horror, of the Roman emperor who placed his edicts so high in the air that the keenest eye could not decipher them, and yet severely punished any breach of them. But the power claimed by the House of Representatives to make anything criminal at their pleasure, at any period after its occurrence, is ten thousand times more dangerous, more tyrannical, more subversive of all liberty and safety. (2 Chase's Trial, 13, 17.)

Luther Martin (who was a member of the convention of 1787 which framed our Constitution):

I shall now proceed in the inquiry, For what can the President, Vice President, or other civil officers, and consequently for what can a judge be impeached? And I shall contend that it must be for an indictable offense. The words of the Constitution are that "they shall be liable to impeachment for treason, bribery, or other high crimes and misdemeanors." There can be no doubt but that treason and bribery are indictable offenses. We have only to inquire, then, what is meant by "high crimes and misdemeanors." What is the true meaning of the word "crime"? It is breach of some law which renders the person who violates it liable to punishment. There can be no crime committed where no such law is violated. * * * Nay, sir, I am ready to go further and say there may be instances of very high crimes and misdemeanors for which an officer ought not to be impeached and removed from office; the crimes ought to be such as relate to his office or which tend to cover the person who committed them with turpitude and infamy; such as to show there can be no dependence on that integrity and honor which will secure the performance of his official duties. (Ibid., 137, 139.)

Mr. Harper:

If the conviction of a judge on impeachment be not to depend on his guilt or innocence of some crime alleged against him, but on some reasons of state, policy, or expediency, which may be thought by the House of Representatives and two-thirds of the Senate to require his removal, I ask why the solemn mockery of articles alleging high crimes and misdemeanors, of a court regularly formed, of a judicial oath administered to the members, of the private examination of witnesses, and of a trial conducted in all the usual forms? Why not settle this question of expediency, as all other questions of expediency are settled, by reference to general political considerations, and in the usual mode of political discussion? No, Mr. President, this principle of the honorable managers, so novel and so alarming; this desperate expedient, resorted to as the last and only prop of a case, which the honorable gentlemen feel to be unsupported by law or evidence; this forlorn hope of the prosecution, pressed into its service after it was found that no offense against any law of the land could be proved, will not, can not avail. Everything by which we are surrounded informs us that we are in a court of law. Everything that we have been for three weeks employed in doing reminds us that we are engaged not in a mere inquiry into the fitness of an officer for the place which he holds, but in the trial of a criminal case on legal principles. And this great truth, so important to the liberties and happiness of this country, is fully established by the decisions of this honorable court in this case on questions of evidence; decisions by which this court has solemnly declared that it holds itself bound to those principles of law which govern tribunals in ordinary cases.

These decisions we accepted as a pledge and now rely on as an assurance that this cause will be determined on no newly discovered notions of political expediency, or state policy, but on the well-settled and well-known principles of law (pp. 206, 207, bracketed). * * * Thus we find that even in England, where the power of impeachment is subject to no expressed constitutional restriction and where abuses of that power for the purpose of party persecution and state policy have sometimes been committed and more frequently attempted, an impeachment has never been considered as a mere inquest of office, but always as a criminal prosecution, differing not in essentials from those which are carried on before the ordinary tribunals of justice and subject to the same rules of evidence and the same legal notions concerning crimes and punishments. * * * What, Mr. President, are offenses in the language of the Constitution and the laws? For a definition of the term "offense," in a constitutional sense, we must consult our law books and not the caprice or the varying opinions of popular leaders or popular assemblies. Those books tell us that the word "offense" means some violation of law. Whence it evidently follows that no officer of Government can be impeached unless he have committed some violation of the law, either statute or common. It is not necessary for me to contend that this offense must be an indictable offense.

I might safely admit the contrary, though I do not admit it; and there are reasons which appear to me unanswerable in favor of the opinion that no offense is impeachable unless it be also the proper subject of an indictment. But it is not necessary to go so far; and I can suppose cases where a judge ought to be impeached for acts which I am not prepared to declare indictable. Suppose, for instance, that a judge should constantly omit to hold court; or should habitually attend so short a time each day as to render it impossible to dispatch the business. It might be doubted whether an indictment would lie for those acts of omission, although I am inclined to think that it would. But I have no hesitation in saying that the judge in such a case ought to be impeached. And this comes within the principle for which I contend; for these acts of culpable omission are a plain and direct violation of the law, which commands him to hold courts a reasonable time for the dispatch of business; and of his oath which binds him to discharge faithfully and diligently the duties of his office. The honorable gentleman who opened the case on the part of the prosecution cited the case of habitual drunkenness and profane swearing on the part of a judge as an instance of an offense not indictable, and yet punishable by impeachment. But I deny this position. Habitual drunkenness in a judge and profane swearing in any person are indictable offenses, and if they were not, still they are violations of the law. I do not mean to say that there is a statute against drunkenness or profane swearing; but they are offenses against good morals, and as such are forbidden by the common law.

They are offenses in the sight of God and man, definite in their nature, capable of precise proof and of a clear defense. The honorable managers have cited a case decided in this court as an authority to prove that a man may be convicted on impeachment without having committed an offense. I mean the case of Judge Pickering. But that case does not support the position. The defendant there was charged with habitual drunkenness and gross misbehavior in court arising from this drunkenness. The defense set up was that the defendant was insane and that the instances adduced of intoxication and improper behavior proceeded from his insanity. On this point there was a contrariety of evidence. It is not for me to inquire on which side the truth lay. But the court, by finding the defendant guilty, gave their sanction to the charge that his insanity proceeded from habitual drunkenness. This case, therefore, proves nothing further than that habitual drunkenness is an impeachable offense. * * * The great principle for which we contend and which is so strongly supported by the clause of the Constitution already cited, that an impeachment is a criminal prosecution and can not be maintained without the proof of some offense against the laws, pervades all the other provinces of the Constitution on the subject of impeachment. * * *

In every light, therefore, in which this great principle can be viewed, whether as a well-established doctrine of the Constitution, as the bulwark of personal safety and judicial independence, as a shield for the characters of those whose lot it may be to sit on a trial of impeachment; or as a solace to them under the necessity of pronouncing a fellow citizen guilty, it equally claims—and I can not doubt that it will receive—the sanction of this honorable court, by whose decision it will, I trust, be established, so far as hereafter to be brought into question, that an impeachment is not a mere inquiry—in the nature of an inquest of office, whether an officer be qualified for his place or whether some reason of policy or expediency may not demand his removal—but a criminal prosecution, for supporting which the proof of some willful violation of a known law of the land is to be indispensably required. * * *

And will this honorable body, sitting not in a legislative but a judicial capacity, be called on to make a law, and to make it for a particular case which has already occurred? What, sir, is the great definition between legislative and judicial functions? Is it not that the former is to make the law for future cases, and that the latter is to declare it as to cases which have already happened? Is it not one of the fundamental principles of our Constitution and an essential ingredient of free government that the legislative and judicial powers shall be kept distinct and separate? That the power of making a general law for future cases shall never be blended in the same hand with that of declaring and applying it to particular and present cases? Does not the union of these two powers in the same hands constitute the worst of despotism? What, sir, is the peculiar and distinguishing characteristic of despotism? It consists in this, sir: That a man may be punished for an act which when he did it was not forbidden by law. While, on the other hand, it is the essence of freedom that no act can be treated as a crime unless there were a precise law forbidding it at the time when it was done. (2 Chase's Trial, 251, 253, 254, 257, 264.)

In the answer which the counsel for Judge Chase prepared they specifically set up the defense that what he was charged with was not an indictable offense, and all through the discussion of the case his counsel over and over insisted upon that point. Mr. Harper, whose language was used by Mr. HOWLAND as indicating the opposite, closed the arguments that were made on that subject in behalf of Judge Chase with the statement that he could not be convicted unless he had violated a known and positive law of the land. What was done with Judge Chase? He was acquitted, a majority of the Senators voting for his acquittal.

Now, shall we say that when you take a man into a court of impeachment and a majority of the judges acquit him of the charge, that that is a decision by the court, that what he was charged with was an impeachable offense?

In the case of Peck, in which there was but a single article of impeachment, what he had done was to take and throw a lawyer into jail and disbar him for 18 months because the lawyer had presumed to criticize his opinion in a case in which the lawyer was counsel for the losing party. He sent him to jail for 24 hours, long enough I take it for a man of the standing of Mr. Lawless to disgrace him. He sent him to jail for 24 hours and suspended him from practice because he presumed to criticize the judge's opinion out of court. If it be not a criminal offense for a judge in the performance of his judicial functions without law or right to send a man to jail, then I do not know what you might consider a criminal offense.

But what was the defense that was made for Judge Peck? Mr. Wirt was his principal counsel and spoke three days in his behalf. You will find from the beginning to the end of his argument he contended that because Judge Peck believed he had a right to punish in that way for contempt he should not be convicted. As was suggested by my friend, Mr. Simpson, Mr. Buchanan, afterwards President of the United States, who was the chairman of the managers of the impeachment in that case, did what I might humbly suggest to the learned chairman of the managers in this case. When Judge Peck was acquitted

on the ground that if he did not have the right to punish Lawless in that way for contempt, he honestly believed he had that right and should not be impeached merely for committing an error, Mr. Buchanan went back to the House of Representatives, and the next day started legislation which resulted in what we have had upon our statute books ever since, that a judge of a Federal court shall not punish in a summary way for contempt for an offense committed out of the presence of the court.

I will not stop to say anything about the case of Judge Humphries. Judge Humphries made no defense, and of course nothing could be concluded where there was no adverse party. He was charged with joining the Confederacy and abandoning his court. It is needless to say anything more on that subject.

Now, I want to come to what it seems to me is the case which ought to be an end of this discussion in the Senate of the United States—the case of Andrew Johnson. He became President in the spring of 1865, after the assassination of Mr. Lincoln and almost immediately, as we all know, became involved in a war with Congress. For two long years and more there was a very unfortunate state of affairs here in which he was charging that Congress was an illegal body hanging on the verge of the Government, to use his words in a speech he made in Cleveland, Ohio, because it did not admit to membership in the House and Senate the representatives of the 10 States which had gone out in 1860 and 1861. Congress was passing laws over his veto over and over again, and there was a state of feeling between Congress on the one hand and the President on the other which never existed in this country before and, let us hope, will never exist again.

In that state of affairs the Judiciary Committee of the House had before it a resolution sent to it by the House directing it to inquire whether Andrew Johnson had committed offenses for which he should be impeached. Mr. Boutwell, of Massachusetts, then a Member of the House, was chairman of that committee, and on behalf of five of the nine members he made a report recommending impeachment. Mr. Wilson, of Iowa, one of the greatest lawyers who ever sat in that body, made a report concurred in by the other three members in which he opposed impeachment and recommended that the resolution favoring impeachment which the majority had reported should not be adopted, because, and only because, the offenses which were charged were not indictable under any law of the United States. He made that report which reviewed the whole subject, and it might perhaps be needless for me to say a word here on this question except to read it. It is already printed in our brief and will be found at the end of the first volume of the printed record in this case at pages 1074 to 1084.

The history of impeachment trials in England from the beginning with the origin of our Constitution and what took place in the constitutional convention and subsequent developments down to 1867 were all set forth at great length and with great ability.

In the House of Representatives, in which there was a three-fourths vote in favor of vetoing the bills of the President, a House in which three-fourths of the Members were violently opposed to the President, when those two reports came before it, Mr. Wilson moved to lay the resolution for impeachment on the table. That motion was carried by nearly a two-thirds vote. The majority had set forth 26 different things which they said the President had done for which he ought to be impeached, mostly what might be called political offenses, and the House determined that they would not favor the impeachment, much as they desired to get rid of the President, because he had not done anything which was indictable and therefore could not be impeached.

Some months before, in the spring of 1867, Congress as one of the things which it had done which enraged Johnson, had passed a tenure-of-office bill, long since repealed, by which they undertook to make it impossible for the President to remove officers without the consent of the Senate. There was a special provision in that bill, that while the President when the Senate was not in session might remove an officer, yet when the Senate came back in December, if it did not confirm that action, the removed officer should resume his office and should be allowed to keep it. In that same summer of 1867 President Johnson undertook to remove Edwin M. Stanton as Secretary of War and to appoint Lorenzo Thomas as Secretary ad interim. Congress was not in session; and he had the right to do that. Under that act, Gen. Grant became Secretary of War ad interim; but when Congress met the Senate refused to confirm the President's action, and Mr. Stanton immediately retook possession of the War Department. On the 21st day of February following, in defiance of the penal provision of the tenure-of-office act, President Johnson undertook to remove Mr. Stanton, and sent Lorenzo Thomas over to Stanton's office with a letter directing Stanton to surrender possession to Thomas. Stanton, as we all remember, refused to do it. The matter came before the House of Representatives, and the House at once impeached Mr. Johnson. Mr. Wilson, who had made the minority report, of which I spoke, which was adopted by the House, then said, "Now the President has committed an indictable offense; and let us impeach him."

It is true, as Mr. Manager HOWLAND said to-day, that in those articles of impeachment there was one which charged the President with having made certain declarations and speeches about Congress as to which there was a question whether he had committed an indictable offense. When it came to a vote here in the Senate, the Senate voted first upon the last article—article 13—which charged a violation of the tenure of office law, and there was a vote of 35 for convicting and 19 against, one vote less than was necessary in order to convict Mr. Johnson; and so he was acquitted.

The Senate then immediately adjourned for two weeks, in order that those who favored impeachment might consider what they could do. They came together here again on the 26th of May, 1868. What did they do? They voted upon article 2 and upon article 3, both of which charged distinctly a violation of the penal provisions of the tenure of office law. Having the same vote upon those two articles, the Senate then adjourned without day without voting upon the other articles at all.

Now, I say there is a formal adjudication of both Houses of Congress, and in as important a case as ever came before the Senate, that, in order to be impeachable, an offense must be indictable.

I need not remind the Senate of the able men who sat on that side of the Chamber presenting the views of the House and the great lawyers who sat over here presenting the views of the President, or the great men who sat in this Chamber at that time and voted upon one side or the other. It was my good fortune to be present during most of that trial, and I remember well particularly that Senator Sumner, who sat over in that part of the Chamber [indicating] and was one of the most active participants in favor of impeachment, could not conceal his impatience with the slow progress of events. He wanted all sorts of evidence to be let in; he wanted the President removed for political reasons; and he was the most disappointed man, perhaps, in this whole body when the impeachment failed. I have just read an article in the December Century Magazine by one of the two survivors of the Senate of that day, Senator Henderson, who voted against impeachment and who still lives in this city, wherein he states that Senator Sumner came to him not long before he died and said, "Henderson, I want to let you know that I was wrong about that impeachment matter and that you were right. I do not want you to say anything about this until after I am dead, but then I want you to make it known."

There have been two impeachment cases since that time, neither of which, it seems to me, in the slightest degree affects the question we have here. Mr. Belknap was charged with bribery—several clear, distinct, specific acts of receiving money in consideration of having made an appointment to office. No defense was made in his case, except that which finally prevailed, that, because anticipating he would be impeached, he went to President Grant and got the President to accept his resignation. I may have something more to say about that case in another part of this argument, but it has no relation to the subject I am discussing now, because it is clear that he was charged with indictable offenses.

In the Swayne case it is true that the counsel for Judge Swayne in presenting the law of that case used a brief which I understood the managers here to say they disowned. I do not so read anything that took place in that record. They had a brief there, which everybody knows was written by Mr. Hannis Taylor; and who Mr. Hannis Taylor is I need not explain to anybody in this Chamber. In that brief he simply took the position that because Judge Swayne was not charged with having done anything in the performance of his official duties, but that everything he was charged with was something outside of his duties in court, he could not be punished for that reason; and his counsel rested the case upon that proposition. As Judge Swayne was acquitted, I do not see how anybody can contend that the Senate held in that case that what Judge Swayne was charged with constituted an impeachable offense.

I do not recall that any of the managers have referred to this, but it has been referred to in the other cases and may be in the minds of many Members of this body, and I therefore

mention it. It has been said, If you are right about that, under what law are you to decide what is an indictable offense? Then it is said that the Supreme Court of the United States has decided that there are no common-law offenses against the United States, and that, therefore, when the Constitution was adopted and when the Government went into operation there were no penal laws; that as there was no penal statute passed for more than a year after the Government was started, no officer during that time could be impeached for any offense whatever. Now, I say that that is a fallacy; the whole argument is a fallacy and altogether wrong. The common law is in force in this tribunal except as changed by acts of Congress. When we come to see why it was that the Supreme Court held that there were no common-law offenses in the inferior courts of the United States, we see at once that the application of that decision to impeachment proceedings is entirely without foundation. I read from the first case in which that question was decided, in Hudson *v.* Goodwin (7 Cranch, p. 32):

> The powers of the General Government are made up of concessions from the several States; whatever is not expressly given to the former, the latter expressly reserve. The judicial power of the United States is a constituent part of those concessions; that power is to be exercised by courts organized for the purpose and brought into existence by an effort of the legislative power of the Union. Of all the courts which the United States may under their general powers constitute, one only, the Supreme Court, possesses jurisdiction derived immediately from the Constitution and of which the legislative power can not deprive it. All other courts created by the General Government possess no jurisdiction but what is given them by the power that creates them, and can be vested with none but what the power ceded to the General Government will authorize them to confer.

So, you see, the Supreme Court merely held that the inferior courts of the United States, which were created by acts of Congress, would take such jurisdiction, and no more, as Congress chose to give them.

It so happened that when Congress created the original criminal court and the other courts in the District of Columbia, they did what might just as well have been done in 1790 as to all the Federal courts. When this District was ceded to the Government and Congress took possession, a law was passed on the 27th of February, 1801, which is still the organic law of the District of Columbia. In that statute they simply said that the laws of the State of Maryland (which included the common law) should remain in force in the District of Columbia until otherwise ordered by Congress.

Congress might have done that for all the Federal courts, but it did not choose to do so. It might do it to-day; but instead of that it has from time to time, as the need appeared for it, passed acts defining criminal offenses.

You perceive at once that this court to which I am speaking is on the same plane in that regard as the Supreme Court of the United States. You are not the creature of any act of Congress. You, like the Supreme Court, are created by the Constitution, and you have the same authority and power to determine what the laws were which existed at the time you were created as the Supreme Court would have to decide what were the laws which govern its proceedings under the provisions of the Constitution, giving it original jurisdiction as to certain classes of cases.

That brings me to another objection which has been made here and which has been often referred to in the textbooks which gentlemen seem to think are of importance here, but which, of course, are only based on the cases, and we have the cases. They say there are many evil acts a judge or other civil officer of the Government might do that are not indictable, and it would be very bad indeed to allow such officer to continue in office, as you would have to do if you decide that he can only be impeached for an indictable offense, this, that, and the other act not being indictable. You find that running all through the discussion of impeachment cases in past times, and especially in the textbooks.

There is an offense known to the common law as misconduct in office, and it reaches, so far as I have been able to discover, almost every one of the illustrations which have been referred to of various acts which it is said would not be indictable offenses, and yet should be impeachable offenses. It is asked, suppose a judge refuses to hold court; suppose he refuses to summon a jury? Well, if he does, he is guilty of misconduct in office. Let me read what the Supreme Court of the United States has said in one simple sentence on that subject. I read from the opinion in the case of South against Maryland, in 18th Howard, page 402:

> It is an undisputed principle of the common law that for a breach of a public duty an officer is punishable by indictment.

Let me give you an instance of what happened in this District, which sufficiently illustrates that subject without going any further. I refer to the case of Tyner against the United States, in 23 Appeals, D. C., 324, a case decided by our Court of Appeals a few years ago. Gen. Tyner had been Assistant Attorney General in charge of the legal work of the Post Office Department. He was indicted, charged with conspiring with a nephew of his to commit an offense against the United States, to wit: The offense of misconduct in office. What was that misconduct? It was his duty, among other things, to investigate charges that were made of the use of the mails for fraudulent purposes, and when he found that there was a case presented which justified action, to go to the Postmaster General and recommend the issuance of a fraud order. We all know, of course, what that means—to stop the use of the mails by fraudulent concerns. The charge was that in a number of cases he had before him evidence that the mails were being used for fraudulent purposes by a number of concerns, which were named in the indictment, which were called investment companies, and that he neglected his duty to go to the Postmaster General and ask for fraud orders in those cases. That indictment was demurred to, and it was claimed on the part of his counsel that that did not constitute an offense under section 5440 of the Revised Statutes. All that Tyner's counsel claimed was that, since there is no such offense as misconduct in office known to the other Federal courts throughout the country, it could not be applied in our local jurisdiction; but the Supreme Court held that, under the common law, the failure of Gen. Tyner, with the evidence before him that the mails were being used for fraudulent purposes by certain named concerns, to go to the Postmaster General and report that and ask for a fraud order was a crime under the common law, the crime known as misconduct in office. So the case went back to trial, and in due time Gen. Tyner was promptly acquitted by the jury. I am not going to take the time to go over the illustrations which have been given here and elsewhere, but if you will go over them you will find that almost without exception they come within that rule of misconduct in office by a public officer.

There is this curious thing about it: It has been suggested in some cases that the law is uncertain in that regard as to whether when a public officer—judge, President, Cabinet officer, or what not—commits an indictable offense against the laws of the United States he can be proceeded against by indictment before he is impeached; and it has been suggested that if he still be in office he must first be impeached. Of course, that makes no difference about the proposition for which we are contending, because the Constitution expressly says that after the officer has been impeached, convicted, and removed from office he shall nevertheless be subject to indictment and trial in the ordinary courts.

As against all that, what do we have suggested here. "Why," says Mr. Manager HOWLAND, "a man who is a civil officer may be impeached whenever the public welfare requires it." If any one of you thinks that the public welfare requires Judge Archbald to be removed, according to this contention you are to vote for his conviction on any particular article you please to select or on all of them, just as you may see fit, although there is no charge here that the public welfare requires him to be removed. And then, says Mr. Manager STERLING, "Each Senator fixes his own standard in that regard;" and, as Mr. Manager WEBB says, "Crimes and misdemeanors have no meaning;" and, as Mr. Manager WEBB said again, "That is, at your pleasure, Senators."

I stated that this was something without precedent, but there was one very bold man who stood in this Chamber some years ago and did the same thing, but he used plainer terms. In the Johnson impeachment trial, when Gen. Benjamin F. Butler was making the opening statement here to the Senate, he announced this doctrine in these words, "Senators, you are a law unto yourselves"; and it was in reply to that proclamation by Gen. Butler, who was bold enough to claim anything anywhere, that Mr. Benjamin R. Curtis, former Associate Justice of the Supreme Court of the United States, one of Mr. Johnson's counsel, uttered the words which Mr. Simpson read from the record in the Johnson case.

Now, I say, instead of that, if there is anything which you find here which Judge Archbald has done which is not indictable and impeachable which you think ought to be indictable and impeachable, do what was done in the Peck case; let the honorable chairman of the Judiciary Committee of this day do what the honorable chairman of the Judiciary Committee of 1831 did, go to the House, and the day after Judge Archbald is acquitted introduce a bill which shall provide that if any Federal judge shall at any time have any business transactions with

any person who shall be or shall be likely to be a litigant in his court he shall, let us say, be fined in the sum of a thousand dollars and imprisoned for not less than one year, or both.

If this theory of the managers is to be adopted, what becomes of the principle which is at the foundation of all criminal jurisdiction in every country which pretends to recognize law, and especially so in this country and under our Constitution. If a man is brought into court he is entitled to know with what he is charged, and, as I said a few moments ago, Judge Archbald is not charged with having done anything which is against the public welfare or for which Senators ought to put him out of office on general principles.

But if I do not misunderstand what is intimated here, whether it is expressly said or not, what you are called upon to do by these learned managers is this: You are to say, with respect to article 1, "I do not find that there is anything there which justifies convicting Judge Archbald," and so with the other articles. "yet he has done certain things and under certain conditions which I think render him unfit to be a Federal judge."

Now, I ask you, Senators, if it is intended to ask the Senate of the United States to disgrace a man, to put him out of his office, and perhaps cover him with a mantle of shame so that he may never hold any other office under the Government of the United States, whether it would not be fair to let his counsel know, when they come before you, what charge they are to meet. If that had been done in this case when we brought here the judges associated with this respondent on the bench for years, the lawyers who practiced before him year after year, the men who knew him from boyhood up, who could tell you what kind of a man he was, there would have been no ruling that that testimony should be excluded, because there is nothing of that kind before the Senate.

We wanted to let the Senate know what kind of a man Judge Archbald is, what kind of a judge he is, and to that end we had witnesses by the score who surrounded him and have known him for many years, and who respect him and love him, but their mouths were closed because there was no such charge made here.

Now after having closed our mouths and kept out that evidence, they say to you, "Judge Archbald is the kind of a man who ought to be removed from office on general principles," or on some idea of "a system." Just what is the theory I do not know, but I presume the learned chairman of the managers will inform us before the case comes to a close.

I ask Senators to remember, while they are dealing with a judge of the Circuit Court of the United States, temporarily assigned to the Commerce Court, they are dealing here with the rights of every civil officer of the Government. It is not a question of judges alone, but a question of the President and Vice President and Cabinet officers and of every officer of the United States, which I suppose includes every official whose appointment has to be confirmed by the Senate, if it does not include Senators and Members of the House.

I am not here to contend that there might not be some provision for putting out of office a President or a Vice President or a Cabinet officer or a judge who is for any reason incompetent to properly perform the duties of his office, but there is no such provision in the Constitution of the United States at present. We have had illustrations here of men who have become unfit for their office and who could not perform the duties of their offices. The case of Judge Pickering is the earliest one. In that case, as it was claimed, the respondent had become insane but the Senate removed him, not on that ground apparently, but because he had come into the court in a drunken condition and had there behaved in a disorderly and disgraceful manner.

But a man may be disqualified in other ways. Twice members of the Supreme Court of the United States have become absolutely disqualified for the performance of their duties. If an officer may be removed because he is not able for one reason to perform the duties of the office, he may be removed because he is so disabled for any other reason. Mr. Justice Hunt was paralyzed, and for that reason unable to attend to his judicial duties, or even to attend the court.

And so of Mr. Justice Moody, who was formerly Attorney General. He now lies upon a bed of pain and sickness with perhaps little expectation of ever getting up from it. Would you impeach him of high crimes and misdemeanors for being incapable of the performance of the duties of his office?

I certainly would aver that no Member of the House of Representatives would ever come here with such a contention, and if he did he would never get a vote in favor of the proposition that Mr. Justice Moody should be removed because he committed the high crime and misdemeanor of becoming incapable by reason of illness of performing his judicial duties. Instead of that you passed an act of Congress which allowed him to retire as though he had reached 70 years of age and had served 10 years upon the bench.

And let me remind you that you have in the case at bar a perfectly clear case of absence of any charge which relates to anything that has been done in the performance of the duties of the office which Judge Archbald holds. He is not charged with committing any crime. That is admitted. He is not charged even with doing anything wrong in connection with the duties of the office, crime or no crime.

Says Mr. Manager CLAYTON, at pages 889 and 890 of this record:

> We make no charge of any misbehavior in connection with official duties.

Says he again:

> We make no charges of partiality.

And at page 941 Mr. STERLING agrees with that proposition.

Now, Senators, as I have a few moments before the hour for adjournment, let me speak of something relating to the merits of this case, as I have said now all that I intend to say about the law, except as I may add a word to what my brother Simpson so well said upon the question of the last six articles.

Mr. Manager HOWLAND complains because we have raised an issue of law and an issue of fact in this case; that our first answer to each article of impeachment is that what is charged is not an impeachable offense; and that, in the second place, we proceed to confess and avoid—terms well known in lawyer's lingo. If he can find any case in the history of this country in which an issue of law of this character was submitted otherwise than at the end of the trial in an impeachment case, he can find some case that has not been referred to in this hearing and is not to be found in the books. In every case, instead of having a demurrer to the articles of impeachment considered, the whole matter has gone over to the final vote. Indeed, Mr. Manager Bingham in the Johnson impeachment trial contended that a demurrer to an article of impeachment had never been allowed.

Now, as to the defense here—and I am particular about this, because I think the Managers, and especially Mr. Manager HOWLAND, have unintentionally not fairly stated what is our defense on the facts. He says we confess and avoid. We do nothing of the kind.

These articles charge that Judge Archbald did certain things. In the first article it is charged that he had certain communications with officers of the Erie Railroad Co.; in the second article, that he saw Mr. Loomis, and so on. We admit these facts. And so as to the other articles. Then the article goes on to charge that the respondent did corruptly, unlawfully, and wrongfully use his judicial influence in those transactions. We deny that he used his judicial influence corruptly; we deny that he used it wrongfully; we deny that he used it unlawfully; and we deny that he used it at all.

I say now, at the conclusion of the evidence in this case, having come down to the time when the final vote is to be taken in this Chamber, if you take all the evidence that has been produced before you, it leaves this case just where it was when it started; that it is proved that Judge Archbald did the things which in his answer he admits he did, and it is not proved that in regard to any of them he used his judicial influence wrongfully, unlawfully, or corruptly, or that he used it at all.

The articles which I wish particularly to refer to are article 1, which refers to the Katydid dump transaction; article 3, which refers to what is known as the Packer No. 3 dump; article 6, which refers to a conversation between Judge Archbald and Mr. Warriner in reference to certain alleged favors for a Mr. Dainty—there is nothing of that kind in the article, but that is what we are now told it is intended to charge—and article 13, which is an attempt to gather up a number of things which are not specified.

That article charges, in the first place, that while Judge Archbald was district judge and circuit judge he entered into a scheme to raise money from litigants in his court by getting them to discount notes made by him or indorsed by him, and also entered into another scheme to get coal property from certain railroads, which are named, and other railroads not named which had litigation in the Commerce Court.

I intend in the discussion of those articles to take them up practically in their inverse order and discuss them in what I consider to be the order of their importance, as indicated by the amount of evidence which has been taken in regard to them.

About article 6 I shall say but a word, and that is this: The charge there is that Mr. Dainty—I am speaking now of the evi-

dence and not of what is in the article—came to Judge Archbald and mentioned the fact that the Everhart heirs, who have been referred to here so often, had outstanding claims against certain coal property of the Lehigh Valley Coal Co., and that it was desired that Judge Archbald should get that company through Mr. Warriner to purchase those interests of the Everhart heirs; that is, that they would get them in, the company being supposed to be very desirous of getting in these interests; and in consideration of that act of kindness to the coal company the respondent would ask it to lease a certain tract of land, called the Morris & Essex tract, to Mr. Dainty. The managers put upon the stand two witnesses to testify to that transaction; one of them was Mr. Dainty and the other Mr. Warriner. Each of them absolutely and positively denied the charge.

Mr. Warriner said that while Judge Archbald had spoken to him about the Everhart heirs' interest, as to which Judge Archbald was himself concerned, as we show here in reference to the Katydid matter, that he never connected that in any manner with the application that Mr. Dainty was to make for the lease to him of what was called the Morris & Essex tract. Mr. Warriner said that as the respondent was about to leave the office of Mr. Warriner he simply mentioned the fact that Mr. Dainty was going to make application, or had made application, for this lease for the Morris & Essex tract, and Mr. Warriner told him it was not to be leased. That was the end of it.

Mr. Dainty testified that in his conversation with the respondent no suggestion was made of a lease of the Morris & Essex tract as a consideration for the getting in of the Everhart interests, and he further says that he did not know whether the respondent did, in fact, see Mr. Warriner in regard to the matter.

Now, Senators, I call your attention to this remarkable fact: That after Mr. Dainty had been on the stand and declared most positively that there was no connection between those two matters, and after Mr. Warriner had been on the stand and testified that, according to his recollection, the two matters were never mentioned as having any relation to each other at all—so that by the testimony of the only two witnesses the managers produced on this point their whole claim was proven to be untrue—after that, when Judge Archbald came on the stand himself, after hearing the testimony of those witnesses and knowing that by no possibility could any other witness have personal knowledge on the subject, he said that, according to his recollection, he did tell Mr. Warriner that Mr. Dainty had suggested the leasing to him (Dainty) of the Morris & Essex tract in consideration of the services which he proposed to render the company in inducing the Everharts to convey their interests in other lands to the company.

Could there be a clearer illustration of the fact that you are dealing with an honest man? It is impossible to conceive that the respondent did not know when he took the stand and told that story that he was giving the only evidence in the case on which the managers could possibly rely to maintain their claim.

Assume that it is so. Assume now that Mr. Dainty did come to Judge Archbald and say, "Judge, I would very much like to get a lease of that Morris & Essex tract, which the coal company owns, and I can confer a great favor upon that railroad company by getting in the interests of these Everhart heirs. They have the interests of a lot of them. They have paid a hundred thousand dollars or so for certain portions of them, and these other people, I think, will convey their interests to them; and I will be willing to accomplish that for them if they will give me a lease in the other tract." If he did suggest that to Mr. Warriner and Mr. Warriner simply said, "We can not lease the Morris & Essex tract, but we will pay the Everhart heirs what we paid the others," and that was the end of the matter, it is impossible to see how that was a high crime or misdemeanor, or any kind of a crime or misdemeanor, or anything for which he could be reproved.

Mr. President, it is now within three minutes of 6 o'clock, and I should like to suspend the argument at this point.

The PRESIDENT pro tempore. The hour for adjournment of the Senate sitting as a court has so nearly arrived, only two minutes remaining, the Chair does not suppose counsel wish to occupy that time. What is the pleasure of the Senate?

Mr. ROOT. I move that the Senate sitting in the trial of the impeachment adjourn.

The motion was agreed to.

Mr. GALLINGER. I move that the Senate adjourn.

The motion was agreed to; and (at 5 o'clock and 59 minutes p. m.) the Senate adjourned until to-morrow, Friday, January 10, 1913, at 12 o'clock meridian.

HOUSE OF REPRESENTATIVES.

THURSDAY, *January 9, 1913.*

The House met at 12 o'clock noon.

The Chaplain, Rev. Henry N. Couden, D. D., offered the following prayer:

Father in heaven, quicken the good spirit within us that it may respond to the call for service. The opportunities are great, the call is insistent. We may none of us become heroes, but we pray that we may fulfill the common daily duties of life patiently, promptly, efficiently, without ostentation, that we may thus ennoble and glorify ourselves in Thee, through Jesus Christ our Lord. Amen.

The Journal of the proceedings of yesterday was read and approved.

COMMITTEE VACANCIES.

Mr. UNDERWOOD. Mr. Speaker, I desire to move the election of some gentlemen to fill vacancies on committees.

I first move that the gentleman from Ohio, Mr. TIMOTHY T. ANSBERRY, be elected to fill the vacancy now existing in the Committee on Ways and Means.

The SPEAKER. Is there any other nomination? If not, it is so ordered.

Mr. UNDERWOOD. I move that Mr. L. L. MORGAN be elected to fill the vacancy in the Committee on Indian Affairs and also the vacancy in the Committee on Elections No. 3.

The SPEAKER. Is there any other nomination? If not, it is so ordered.

Mr. UNDERWOOD. I move that Mr. A. C. HART be elected to fill the vacancy in the Committee on the District of Columbia.

The SPEAKER. Is there any other nomination? If not, it is so ordered.

Mr. UNDERWOOD. Mr. Speaker, I move that Mr. H. D. FLOOD be elected chairman of the Committee on Foreign Affairs.

The SPEAKER. Is there any other nomination? If not, it is so ordered.

Mr. UNDERWOOD. Mr. Speaker, I desire to inquire whether the gentleman from Virginia [Mr. FLOOD] has presented his resignation as chairman of the Committee on the Territories?

The SPEAKER. Yes; he presented it, and it was accepted.

Mr. UNDERWOOD. I therefore move that Mr. B. G. HUMPHREYS be elected chairman of the Committee on the Territories.

The SPEAKER. Is there any other nomination? If not, it is so ordered.

Mr. UNDERWOOD. Mr. Speaker, at the request of the minority leader, Mr. MANN, I desire to move that Mr. GEORGE C. SCOTT be elected to fill the vacancies in the Committee on Coinage, Weights, and Measures and the Committee on Reform in the Civil Service.

The SPEAKER. Is there any other nomination? If not, it is so ordered.

Mr. UNDERWOOD. I also move that Mr. E. A. MERRITT, Jr., be elected to fill the vacancy in the Committee on Immigration and Naturalization and the vacancy in the Committee on Education.

The SPEAKER. Is there any other nomination? If not, it is so ordered.

Mr. UNDERWOOD. I move that Mr. FRANK L. GREENE be elected to fill the vacancy in the Committee on Claims and the vacancy in the Committee on Pensions.

The SPEAKER. Is there any other nomination? If not, it is so ordered.

Mr. UNDERWOOD. I move that Mr. L. C. DYER be elected to fill the vacancy in the Committee on Industrial Arts and Expositions.

The SPEAKER. Is there any other nomination? If not, it is so ordered.

Mr. UNDERWOOD. I move that Mr. JOHN R. FARR be elected to fill the vacancy in the Committee on Mines and Mining.

The SPEAKER. Is there any other nomination? If not, it is so ordered.

Mr. UNDERWOOD. I move that Mr. BURTON L. FRENCH be elected to fill the vacancy in the Committee on Elections No. 3.

The SPEAKER. Is there any other nomination? If not, it is so ordered.

Mr. UNDERWOOD. I move that Mr. WILLIAM S. VARE be elected to fill the vacancy in the Committee on Labor.

The SPEAKER. Is there any other nomination? If not, it is so ordered.

Mr. UNDERWOOD. That is all, Mr. Speaker.

UNITED STATES DISTRICT COURT AT OPELIKA, ALA.

The SPEAKER. A change of reference is requested from the calendar of the Committee of the Whole House on the state of the Union to the House Calendar of the bill (H. R. 27827) to amend section 70 of an act entitled "An act to codify, revise, and amend the laws relating to the judiciary," approved March 3, 1911. If there be no objection, that change of reference will be made.

Mr. MANN. What is the proposition?

The SPEAKER. It is to change the bill from one calendar to the other.

Mr. WEBB. Mr. Speaker, that seems to be a bill that is properly within the jurisdiction of the Judiciary Committee. My duties elsewhere have caused me to be absent from some sessions. Is it proposed to change the reference from the Judiciary Committee?

The SPEAKER. No; it is a bill which has been favorably reported by the Judiciary Committee. It is now on the Union Calendar, where it was placed by mistake. It adds a new place for holding the district court in one of the Alabama districts. There is no expense attached to it and evidently it does not belong on the Union Calendar.

Mr. WEBB. I have no objection, Mr. Speaker. I simply wanted to know what the proposed change was.

Mr. HARDWICK. Mr. Speaker, reserving the right to object, if the bill indirectly makes a charge on the Treasury it was properly referred to the Union Calendar.

The SPEAKER. Very true, but it does not do that.

Mr. HARDWICK. If it involves a new Federal district, I think it does.

The SPEAKER. It does not. The Clerk will read the last paragraph in the report of the Judiciary Committee on this bill.

The Clerk read as follows:

The erection of a public building at Opelika has been authorized by law. The bill now reported by your committee provides that, until the Government building shall be erected, suitable court rooms, accommodations, etc., shall be furnished free of expense to the Government. This will be done by the authorities of Lee County at Opelika.

The bill does not create any new office.

The SPEAKER. The gentleman will see that it simply provides a new place for holding court in a district already established. Is there objection to the proposed change from the Union Calendar to the House Calendar?

There was no objection.

INDIAN APPROPRIATION BILL.

Mr. STEPHENS of Texas. Mr. Speaker, I move that the House resolve itself into Committee of the Whole House on the state of the Union for the further consideration of the bill H. R. 26874, the Indian appropriation bill.

The motion was agreed to.

Accordingly the House resolved itself into Committee of the Whole House on the state of the Union with Mr. SAUNDERS in the chair.

The CHAIRMAN. The House is now in Committee of the Whole House on the state of the Union for the further consideration of the Indian appropriation bill. At the adjournment of the last session several points of order had been reserved. I will ask the gentleman from Illinois if they are insisted upon.

Mr. FOSTER. Mr. Chairman, I made the point of order on the two provisions which have gone over until to-day. My only idea in this matter was that this amount should be paid from the tribal fund of these Indians instead of out of the Treasury as a gratuity. After looking into the matter somewhat I have changed my mind about it and wish to withdraw the point of order and offer an amendment, if I may be given the opportunity to do so.

Mr. FERRIS. Reserving the point of order, Mr. Chairman, on the pending paragraph, I would like to inquire if an amendment of that kind will be agreeable to the other side?

Mr. BURKE of South Dakota. I will say that I can not agree to any such proposition. I think I can demonstrate satisfactorily to the Chair that the item is not subject to a point of order.

The CHAIRMAN. The statement of the gentleman from Oklahoma related to the merits of the proposition and not to the point of order.

Mr. BURKE of South Dakota. I understand. It is a treaty obligation, and, furthermore, about one-half of the Indians being without any funds from which we may reimburse the Government, and, furthermore, because we have already provided for the support of such Indians as have funds out of their own funds, I can not consent to the amendment.

Mr. FERRIS. Will the gentleman yield?

Mr. BURKE of South Dakota. Certainly.

Mr. FERRIS. Is it not a fact that not one penny of the money that we provide for schools in your State is reimbursable?

Mr. BURKE of South Dakota. No part of the money provided for education; and no part of the item now under consideration is used for education.

Mr. FERRIS. Is it not true that three schools—the one at Flandreau, the one at Pierre, and at Rapid City—are specifically provided for?

Mr. BURKE of South Dakota. Certainly. But the Flandreau School is located about 2 miles on the east side of the State from the line, and the attendance of that school is from a number of States—Nebraska, Minnesota, and South Dakota. Out of the whole number of children being educated at these three schools the gentleman refers to they only take care of 700 or 800 pupils.

Mr. FERRIS. Is it not true that in the entire State of South Dakota there are 20,352 Indians?

Mr. BURKE of South Dakota. My recollection is that it is something like that number, but that does not include the schools in North Dakota, that portion of the Standing Rock which resides in North Dakota, and some Sioux that live over in Nebraska.

Mr. FERRIS. They are provided for elsewhere, are they not?

Mr. BURKE of South Dakota. No; this is for the support of the Sioux. The gentleman has in mind the educational item. The item which the gentleman from Illinois made the point of order against was the item that provides for an appropriation for subsistence. The educational item is a separate item.

Mr. FERRIS. I would like to inquire what the subsistence item is used for?

Mr. BURKE of South Dakota. For the purpose of civilization; some of it is used for rations. Every able-bodied Indian able to work, instead of having rations issued to him, is paid so much a day for the labor for work upon the roads and other work upon the reservation. I may say that as to the helpless and very aged the department has got away from the system of issuing rations, and is using the money that the rations represent in employing the Indians and paying them and letting them buy their own subsistence.

Mr. FERRIS. How many people are employed on the $307,000 item?

Mr. BURKE of South Dakota. I can not say, but not a very large number. Each agency, of course, has, as the gentleman is quite well aware, a superintendent and a financial clerk and such other employees as may be necessary at the agency. I do not think there are over five or six, if you do not count the police; and then we have a subagent, who has employees and farmers and matrons.

Mr. FERRIS. It is true that these Indians have a cash deposit amounting to some $3,000,000, is it not?

Mr. BURKE of South Dakota. There is a trust fund that is on deposit credited to the Indians amounting to $3,000,000. That bears 5 per cent interest, and it provides that one-half of the interest may be spent annually for education and the other half may be paid to the Indians per capita. It is also provided that after a certain number of years, I think 10 years, the Secretary of the Interior may spend 10 per cent of the $3,000,000 fund, but he has not expended any part of it, and at the expiration of 50 years the amount is expended as provided by the agreement in the treaty.

Mr. FERRIS. It is also true that these 20,000 and over Indians have property amounting to $41,015,702.05.

Mr. BURKE of South Dakota. I can not say as to that. These Indians have allotments, but they are mostly only fit for grazing purposes. So far as being valuable for producing crops, they are practically not worth anything.

Mr. FERRIS. Is any part of the $307,000 used for tribal schools?

Mr. BURKE of South Dakota. I understand not.

Mr. FERRIS. The gentleman does not know how much is used for salaries or how much for rations and subsistence?

Mr. BURKE of South Dakota. I think I could tell by referring to the justification that was furnished. The gentleman will remember that the estimates were about $300,000 in excess of what we are appropriating, and therefore the expenditures would include everything that has been paid out both from the money appropriated and the money belonging to the Indians.

Mr. FERRIS. I see here that there is $200,000 for schools and another item, subsistence, $14,000. What is the $14,000 used for?

Mr. BURKE of South Dakota. Fourteen thousand dollars; I presume the gentleman refers to that item for the Yankton Agency. That is to maintain the agency of the Yankton In-

dians. Many of them are old, and, as the gentleman knows, the Government supervises the leasing of the land, the selling of inherited lands, the deposit of funds, the paying of money from time to time, teaching them agriculture, and so forth. Fourteen thousand dollars is to cover the expenses, and is similar to the items that are carried in the bill for the agencies generally.

Mr. FERRIS. While the gentleman from South Dakota was chairman of the committee I noticed that his policy was, and as he stated on the floor and in the committee, that in the future, where the Indians had any money, they should pay their own expenses.

Mr. BURKE of South Dakota. As far as possible.

Mr. FERRIS. Pursuant to that idea he incorporated the following language in the bill relative to the Kiowa Indians in Oklahoma:

The Secretary of the Interior is hereby authorized to withdraw from the Treasury of the United States, at his discretion, the sum of $25,000, or so much thereof as may be necessary, of the funds on deposit to the credit of the Kiowa, Comanche, and Apache Tribes of Indians in Oklahoma, for the support of the agency and pay of employees maintained for their benefit.

If that was good, and if the rule should be uniform wherever the Indians have money, does not the gentleman think we ought to let the Indians in South Dakota take from their funds to pay the agency?

Mr. BURKE of South Dakota. Mr. Chairman, we have to consider in each instance the law, and in some instances agreements that may be in existence between the tribes and the United States, and my recollection is that in connection with the Kiowa and Comanche Tribes—and if I am mistaken the gentleman will correct me—there is something that authorizes that, and the gentleman will recall that a treaty was made with the Kiowa and Comanche Indians for the sale of their surplus lands, and the consideration was to be $1,000,000; that when the treaty came here for ratification the Senate put in an amendment that a certain area should be reserved for the use in common of the Indians for a pasture, and that amendment was adopted and it became a law. The Secretary of the Interior, on his own initiative, reserved 25,000 acres for a wood pasture, which was not sold. Later there was legislation authorizing the sale of these five hundred thousand and odd acres of land which we had previously purchased from the Indians, and the proceeds went into the Treasury to their credit, to the extent of several millions of dollars. We have in that instance been appropriating for their support out of their funds. I do not think the cases are identical, although in South Dakota, as the gentleman knows, this bill provides that so far as the Cheyenne, Standing Rocks, and Rosebuds are concerned, their support shall come from their funds.

Mr. FERRIS. Mr. Chairman, I think the item is clearly subject to a point of order, and unless the gentleman desires to be heard further upon the merits, I desire to present the authorities that I think sustain the point of order.

The CHAIRMAN. Will the gentleman indicate the particular paragraph to which he made the point of order?

Mr. FERRIS. I make the point of order to the paragraph under consideration, beginning with line 19, on page 26, and extending over to page 27, down to line 9. It is the $307,000 item. The language of the paragraph recites that this appropriation is made pursuant to article 13 of the treaty of April 29, 1868. I read from article 10 of that treaty:

In lieu of all sums of money, or other annuities provided for, to be paid to the Indians herein named, under any treaty or treaties heretofore made, the United States agrees to deliver at the agency house on the reservation herein named, on or before the 1st day of August in each year, for 30 years, the following articles.

Then the next article set out the articles—oxen, cows, blankets, and what not.

I think there will be no dispute that the article of the treaty contained in the treaty of 1868 has expired for more than 4 years. The contention of gentlemen on the other side will be that the treaty of 1877 abrogates and takes away the limitation provided in the treaty of 1868. The 1868 treaty was for a period of 20 years, and it provided certain commodities should be furnished the Indians in lieu of the ceded lands. Then, in 1889 an act was passed which extended it until 1908. That treaty then expired, on which there is no other legislation that I have been able to find, except the treaty of 1877. I think it is correct that the treaty of 1868 has expired, and unless revived by the treaty of 1877 this item is clearly subject to a point of order.

I read now from volume 19 of the United States Revised Statutes at Large, article 5. I find this language in the treaty of 1877:

In consideration of the foregoing cession of territory and rights and upon full compliance with each and every obligation assumed by the said Indians, the United States does agree to provide all necessary aid to assist the said Indians in the work of civilization, to furnish to them schools and instruction in mechanical and agricultural arts, as provided for in the treaty of 1868.

That is one place where the Indians have ceded the lands, and where the Federal Government agrees to do certain things, but reciting that it is subject to the limitations of the treaty of 1868, which has at this time expired. Again, in article 8 of the same volume—volume 19—United States Statutes at Large, page 256, article 8 provides:

The provisions of the said treaty of 1868, except as herein modified, shall continue in full force, and that the provisions of this agreement shall apply to any country which may hereafter be occupied by the said Indians as a home, and Congress shall by appropriate legislation secure to them an orderly government; they shall be subject to the laws of the United States and each individual shall be protected in his rights of property, person, and life.

The treaty on which they rely is the treaty of 1877, and in the specific places just read, one being the first part of article 5, and the other being article 8 of the treaty of 1877, which is relied upon, cited as authority for this appropriation. It is specifically provided that this treaty, and the Indians, for the cession made, shall be subject to the limitations set forth in the treaty of 1868. I do not know what could be more specific.

The CHAIRMAN. The idea of the gentleman is that the rights conferred under the act of 1877 shall expire as of the time the treaty of 1868 shall expire.

Mr. FERRIS. Precisely, and let me again emphasize that point. The thing the Indians did to bring about this treaty was to cede certain lands. The thing the Federal Government did was to grant them certain school privileges, annuities, and certain blankets and oxen. Let me again read, for here is the milk in the coconut, the very contract itself, the thing the Federal Government agreed to do:

In consideration of the foregoing cession of territory and rights, and upon full compliance with each and every obligation assumed by the Indians, the United States does agree to provide all necessary aid to assist the said Indians in the work of civilization, to furnish to them schools and instruction in mechanical and agricultural arts as provided for in the treaty of 1868.

Mr. Chairman, one word upon the merits of this proposition. The State of South Dakota has three schools specifically provided for, aggregating from $50,000 to $65,000 each. The State of South Dakota has not a single reimbursable item in the whole State. The Indians have $3,000,000 in cash and they have $41,000,000 in property. They have only 20,000 Indians in the whole State. I understand that this is not debating the point of order, but I state it in justification of my reservation of the point of order. When this matter was considered I did not know that it was subject to a point of order, and I did not know that the succeeding paragraph was subject to a point of order.

Mr. BURKE of South Dakota. Mr. Chairman, let me ask the gentleman one or two questions. I do not quite follow just what the point of order is, and I would ask the gentleman to repeat it in order that I may know just what he is contending for.

Mr. FERRIS. My point of order is, first——

Mr. BURKE of South Dakota. Let me ask the gentleman this question: The first item in this paragraph is an item that is provided for under article 13 of the treaty of 1868. Now, does the gentleman raise a point of order as to that item?

Mr. FERRIS. I raise it as to the paragraph, and I will state my grounds in my own way. My point of order is that this is carried on its face as a treaty item when there is no unexpired treaty in support of it. The further provision is that there is no authority of law and, further, that there is no authority of law for it, either in treaty or in statute.

Mr. BURKE of South Dakota. Mr. Chairman, I am somewhat surprised at the argument presented by the distinguished gentleman who has just taken his seat. I shall very briefly endeavor to answer what he has stated, and then endeavor to convince the Chair that this item is in order. The gentleman read from the treaty of 1877, which I want to refer to, and he reads article 5, but before commenting upon that part of his point of order, I want to call the Chair's attention to the first item that appears in the paragraph against which the point of order has been made, and I would call the Chair's attention to article 13 of the treaty of 1868, which provides:

The United States hereby agrees to furnish annually to the Indians the physician, teacher, carpenter, miller, engineer, farmer, and blacksmiths, as herein contemplated, and that such appropriation shall be made from time to time on the estimates of the Secretary of the Interior as will be sufficient to employ such persons.

Now, there is no limitation in that language and therefore the treaty is still in effect and therefore, so far as that part of the paragraph is concerned, it is not subject to a point of order. And the same is true as to the next item, which provides for the pay of a second blacksmith; and I would cite in support of

that item article 8 of the treaty of 1868, and I will only read the concluding part:

And it is further stipulated that such persons as may commence farming shall receive instructions from the farmer herein provided for, and whenever more than 100 persons shall enter upon the cultivation of the soil a second blacksmith shall be provided, with such iron and steel and other material as may be needed.

And I say there is no limitation as to that article of the treaty of 1868 and therefore, so far as these two items are concerned, the point of order will not lie.

Now, the gentleman directs his arguments to the portion of the paragraph which provides for the subsistence of the Sioux, and so forth, and he cites the treaty of 1877, or a part of that treaty, and he reads from article 7:

In consideration of the foregoing cession of territory and rights—

The CHAIRMAN. Is the gentleman reading from article 7?

Mr. BURKE of South Dakota. I am reading from article 5 of the treaty of 1877, on page 170:

In consideration of the foregoing cession of territory and rights, and upon full compliance with each and every obligation assumed by said Indians, the United States does agree to provide all necessary aid to assist the said Indians in the work of civilization, to furnish them schools of instruction in mechanical and agricultural arts, as provided for by the treaty of 1868.

In other words, the gentleman is now contending that the consideration for that cession, which was a hundred miles square, and said to be the richest hundred-mile square in the world, was to do for these Indians what we had already obligated ourselves to do by prior treaty, namely, the treaty of 1868. He states with emphasis, and he reads it the second time, that in consideration of this cession the United States will do only what it has already contracted to do by the treaty of 1868.

Now, Mr. Chairman, it goes on further—he did not read it all—and says:

Also to provide the said Indian with subsistence, consisting of a ration for each individual, of a pound and a half of beef, or, in lieu thereof, one-half pound of bacon, one-half pound of flour, one-half pound of corn; and for every 100 rations, 4 pounds of coffee, 8 pounds of sugar, and 3 pounds of beans, or, in lieu of said articles, the equivalent thereof in the discretion of the Commissioner of Indian Affairs. Such rations, or so much thereof as may be necessary, shall be continued until the Indians are able to support themselves.

Is there any limitation of that language? Is there anything about the treaty of 1868 which limited some of these requirements to 20 or 30 years? Not a word. And as I have repeatedly stated on the floor of this House, this treaty of 1877, which the Indians have found much fault with, is the best treaty from the standpoint of the Indian that has ever been entered into by the Indians of the United States, because it is not limited. And until these Indians are self-supporting the United States is obligated to support them.

Now, Mr. Chairman, while I have this treaty before me, and without taking the time to return to it, there is some language in this provision that the Chair inquired about the other day and wanted to know if there is anything that authorized the language that has reference to the sum appropriated to include transportation of supplies from the termination of railroad or steamboat transportation, and that in this service Indians shall be employed wherever practicable. I find, Mr. Chairman, in this same treaty of 1877, this language:

And will also employ Indians, so far as practicable, in the performance of Government work upon their reservation.

In other words, the United States stipulated and promised that as far as practicable they would employ Indian labor, and in the matter of transportation I have noticed for many years that practically all of the transportation of Indian supplies from the point where received on the railroad or the river to the agency has been by Indian labor.

Now, Mr. Chairman, it was suggested the other day, and with considerable emphasis by the gentleman from Oklahoma [Mr. FERRIS], that this was an effort to obtain an appropriation. He used this language:

The treaty of 1877, conjured from somewhere, the Lord only knows, is intended—

And so forth.

Now, Mr. Chairman, when this treaty was ratified in 1877 Congress began making appropriations for the support and subsistence and civilization of the Sioux Indians, and if the gentleman will take the act of 1877 he will find the same language as appears in this act, and so on down in every single Indian appropriation act up to the present time. And there never has been one dollar appropriated in all these years except under the treaty of 1877. Never before, I think, Mr. Chairman, has anyone raised a point of order against it.

This appears to be, so far as I am able to ascertain, the first time that a point of order has been made against this item. But it does appear very clearly that whoever prepared the item originally exercised great care and endeavored to follow the provisions of the treaty, and the fact that it has gone on from 1878 down to the present time is pretty good evidence, it seems to me, that the treaty of 1877 authorizes this appropriation.

Now, I want to refer for a moment to the treaty or agreement, as it is called, of 1889. I want to read section 19 of the act of March 2, 1889, which ratified an agreement made with the Sioux Tribe of Indians. Section 19 provides that—

All the provisions of the said treaty with the different bands of the Sioux Nation of Indians concluded April 29, 1868, and the agreement with the same approved February 28, 1877, not in conflict with the provisions and requirements of this act, are hereby continued in force according to their tenor and limitations, anything in this act to the contrary notwithstanding.

Now there, Mr. Chairman, we have a later agreement, made in 1889, wherein it was expressly provided that it was not to impair former treaty obligations and wherein it was stipulated that they were to be continued in force according to their tenor and limitations—"anything in this act to the contrary notwithstanding," it said.

How could anything be more positive? How could anything be put in the English language more effectively to express what was meant than that language? So I apprehend that when my friend from Oklahoma [Mr. FERRIS] says that we have conjured up and brought in here an appropriation not justified by a treaty he spoke hastily. I think he spoke without considering fully whether or not he was justified in making that statement.

Now, I have stated that this appropriation has been made for 40 years in the language that appears in the bill at the present time, and I want to say further that as regards the question of the two other items referred to in the treaty of 1868 three or four years ago we carefully went through the bill and eliminated every item that we thought was not justified by the treaty obligations of the Government, and as to these two provisions we found that they were still in full force and effect, and therefore we provided for them.

Now, Mr. Chairman, I need not go further into the merits. I think I have said sufficient to satisfy the Chair that this appropriation is justified by the treaty and that the treaty obligation of the Government requires that this or some other appropriation be made in accordance with its provisions.

Mr. MARTIN of South Dakota. Mr. Chairman, I should like to be heard briefly on the point of order. At the risk possibly of repeating some things that my colleague [Mr. BURKE] has already very ably and forcibly said, I think this point of order, raised for the first time after a uniform interpretation of this treaty for 36 years, is sufficiently unusual to justify its further discussion.

I think that the proper interpretation to be given to this treaty will be better understood by a consideration of some of the circumstances under which it was made. In the year 1874, as a result of what is known as the Custer expedition, gold was discovered in the Black Hills, in western-southern Dakota. Prospectors immediately began rushing into that country, particularly in 1875 and in the fore part of 1876. The Government had its Army out upon the frontier to forcibly eject the white prospectors from that country, because it was Indian territory.

It was at that time well known to be prospectively, at least, very rich in gold. This treaty was made under those circumstances. A commission was appointed to come to terms, if possible, with the Sioux Indians, so that this territory might be acquired by the Government. The first efforts in the council with the Indians were unsuccessful, and ended in a very serious threat of trouble to our commissioners. Later, in the month of September, 1876, at Red Cloud, in Nebraska, immediately to the south of this territory, another council was held which led to the making of this treaty.

Now, the Chair will notice these conditions: Something supposed to be very valuable was desired by the Government by means of a treaty. The inhabitants of the country were all rushing in to take possession of this territory forcibly, and——

Mr. FERRIS. Mr. Chairman, will the gentleman yield?

The CHAIRMAN. Does the gentleman from South Dakota yield to the gentleman from Oklahoma?

Mr. MARTIN of South Dakota. Certainly.

Mr. FERRIS. I will ask the gentleman if in article 4 of the treaty of 1877, on which he relies, the Indians did not specifically agree that they would remove to the Indian Territory? And I will ask him whether it is not true, as a matter of fact, that they did not remove at all, thereby totally breaking the treaty?

Mr. MARTIN of South Dakota. Oh, no.

Mr. FERRIS. What is the fact?

Mr. MARTIN of South Dakota. It is left optional with the Indians. They can go there and establish a home if they desire

to do so, but, in fact, they did not desire to do it. The treaty of 1889 was a further revision of that question of their domicile.

Mr. FERRIS. Article 4 sets out the conditions upon which they are to be liable for anything.

Mr. MARTIN of South Dakota. I hope that the gentleman will not be driven by the absurdity of his point of order to an assumption of the position that the Government does not own the Black Hills. That is a position that the Indians have sought to force upon us. Although the treaty of 1868 provided that all subsequent treaties should be ratified by three-fourths of the male adult Indians, this treaty was in fact ratified by the authorized chiefs, and the Indians accepted the benefits of the treaty, and it thereafter became ratified by the treaty of 1889 by the signature of three-fourths of the Indians. But if the gentleman from Oklahoma [Mr. FERRIS] is right in his contention that this treaty is not in force, where are we?

Mr. FERRIS. Will the gentleman yield?

The CHAIRMAN. Does the gentleman from South Dakota yield?

Mr. MARTIN of South Dakota. In a moment. We would be left under the necessity of recognizing the Indian title to a country that has often been referred to as the richest 100 miles square on the face of the globe. From this very territory, as to which the gentleman is now seeking to relieve the Government from its obligations, entered into for its purchase, in excess of $150,000,000 of gold has been taken from that time until now, and that country is now producing gold in round figures to the extent of $10,000,000 every year.

Now, the Indians would be very glad, indeed, to be placed in status quo and relieved of the obligations of that treaty.

It is perfectly absurd here, after an interpretation placed upon this treaty by the Indians, by the Indian Bureau, and by Congress uninterruptedly for 36 years, for the gentleman from Oklahoma [Mr. FERRIS], even under the smart of a counter irritant from my distinguished colleague [Mr. BURKE] some days ago in Oklahoma matters, to attempt to dig up and overturn something that has been accepted as an interpretation for 36 years.

Mr. FERRIS. Will the gentleman yield?

Mr. MARTIN of South Dakota. Certainly.

Mr. FERRIS. If the interpretation had been accepted for 36 years, and it was wrongly accepted at first, then it would be wrong to accept it now, and time certainly does not bar the right to call attention to a treaty that has expired.

Mr. MARTIN of South Dakota. My suggestion is that, with all his ability, the gentleman perhaps has not succeeded at the end of 36 years in overturning the good sense and knowledge of this law which has been applied in Congress and out of it uninterruptedly during that period.

I have stated the surrounding circumstances, which the Chair as a lawyer will recognize at once as very proper to consider in aid to an understanding of the intention of the parties to this agreement of 1876. Certainly the Indian was expected to get something—and something of very great value—in consideration of the cession of that great gold territory. Now, the gentleman suggests this absurd interpretation, because at the end of the paragraph providing for numerous obligations that the Government is to discharge are these words: "As provided in the treaty of 1868." Because the language "as provided in the treaty of 1868" is a part of the paragraph, the gentleman would have the Chair interpret that the limitation of time—20 years—for certain acts in the treaty of 1868 was still to be a limitation here. In other words, that the Indians were to get absolutely nothing additional by virtue of this treaty.

The language as provided in 1868, used in section 5 of the treaty of 1876, is simply descriptive of the class and kind of educational facilities that are to be furnished. It is not simply a repetition of the time period of the treaty of 1868, but it is descriptive of the class and kind of educational facilities that are to be furnished; for instance, instruction in mechanical and agricultural arts, "as provided by the treaty of 1868."

The distinguishing feature of this treaty of 1876 between the Government and the Sioux Indians is this, that for the first time, at least so far as these Indians are concerned, the Government undertook to enter into obligations for education, civilization, and support that were not to be limited by time, but were to continue indefinitely, or until the Indians were able to support themselves; and by applying that test to the interpretation of this treaty every provision of it is perfectly plain, and the surrounding circumstances which I have already narrated at once suggest and corroborate that interpretation.

Remember that that treaty of 1876 was made at Red Cloud, Nebr., under armed protection of the commissioners of the Government who were making the treaty. Remember that a gold territory, known to be immensely valuable, was the consideration for this treaty. Remember also that the Government had already agreed to furnish maintenance to these people for 30 years from 1868 and educational facilities for 20 years from 1868, and it was in 1876 when this second treaty was made and the Government was bound to furnish still for 12 years these educational facilities at the time the parties came together. And here is the absurd contention of the gentleman from Oklahoma [Mr. FERRIS] that all that the Government agreed to do for these Indians in the way of education and civilization was simply to reiterate what they had already agreed to in 1868, although there were 12 years of that former treaty obligation still to run when this remarkable contract was entered into on the part of the Indians under these unusual circumstances. Listen to the language:

ART. 5. In consideration of the foregoing cession of territory and rights—

A valuable consideration—

and upon full compliance with each and every obligation assumed by the said Indian, the United States does agree to provide all necessary aid to assist the said Indians in the work of civilization—

Not for a year or for two years or for three years, but—

All necessary aid to assist the said Indians in the work of civilization.

And if there were nothing more about it than that part of the language it would justify the furnishing of schools indefinitely and as a part and parcel of appropriate aids to civilization.

By this agreement the Sioux Indians, in parting with their immensely valuable territory, assured themselves and their posterity of the assistance of the Government in the aid of civilization, and the ability to support themselves and their families however long that civilizing problem might take. Further—

To furnish to them schools and instruction in mechanical and agricultural arts as provided for by the treaty of 1868.

That is to say, agricultural and mechanical arts are the kind of schooling to be furnished, as specified in the treaty of 1868. Now, follow further—

Also to provide the said Indians with subsistence consisting of a ration for each individual of a pound and a half of beef (or in lieu thereof one-half pound of bacon), one-half pound of flour, and one-half pound of corn.

And so forth.

In the discretion of the Commissioner of Indian Affairs—

As to equivalent rations. And now follows—

Such rations, or so much thereof as may be necessary, shall be continued until the Indians are able to support themselves.

There were obligations for rations and yearly annuities under the treaty of 1868, still in force, to continue for 30 years from 1868, or 22 years beyond the period of this treaty.

The contention here urged by the gentleman from Oklahoma [Mr. FERRIS] would lead the Chair and the committee to this position: That under these extraordinary circumstances the Government, in consideration of the cession of that great gold territory, agreed that they would do just what they had agreed to do for the Sioux Indians by the treaty of 1868, which was still in force for 12 years, to wit, furnish them education in industrial and mechanical arts for 12 years, as provided in 1868—an absolutely absurd proposition.

My contention, which has been the interpretation of the department uniformly, is that the Sioux Indians by this treaty assured themselves of proper instruction in education and preparation for civilization until they were able to take care of themselves in these directions. In that way that interpretation gives vitality and some sense to the treaty. The interpretation of the gentleman from Oklahoma [Mr. FERRIS] would leave us in the position that the Government acquired this great territory without any new obligations whatever as consideration for the cession of that territory.

Mr. FERRIS. Mr. Charman, I shall detain the Chair but a few minutes. The whole drift of the argument of the gentleman is that because for 36 years this has stood here and been appropriated for we should keep on indefinitely appropriating for it. Another contention is that the treaty of 1877 revitalizes, sweeps away, sets aside, puts in full force and effect an entirely new deal. If that contention were borne out by the facts or by the plain wording of the act of 1877, undoubtedly the gentleman would be correct, but when I read in section 3 these words and in two or three other places similar words, I can not gather by what rule of construction the gentlemen arrive at that contention. I will read from page 255. Section 3 reads as follows:

The said Indians also agree that they will hereafter receive all annuities appropriated by said treaty of 1868 and all subsistence and supplies which may be provided for them under the present or any future act of Congress at such points and places or such reservations in the vicinity of the Missouri River as the President of the United States shall designate.

The next paragraph provides that they shall remove and how the commission shall go and see if it is a suitable place for them, and then the fifth article specifically limits them to the provisions of 1868, and says it with all the emphasis that the words can convey.

Article 8, on the same page, says that these Indians shall receive their annuities, shall receive their support and civilization according to the rules and terms of the treaties of 1868, which the gentleman himself admits is extinct.

One of the gentlemen from South Dakota says the act of 1889, which is found in the United States Statutes at Large, volume 25, page 1894, section 17, and reads as follows:

SEC. 17. That it is hereby enacted that the seventh article of the said treaty of April 29, 1868, securing to said Indians the benefits of education, subject to such modifications as Congress shall deem most effective, secure to said Indians equivalent benefits of such education, shall continue in force for 20 years from and after the time this act shall take effect.

Certainly in the act of 1889 there is nothing enlarging the act of 1868. In the act of 1877 there is in three different articles specific reference to specific provisions, which provides that they are governed by the limitations of the act of 1868. If the act of 1868 has expired, and if the act of 1877 is the one on which they rely, and in three distinct articles of that act they hold that the Indians are bound by the articles and provisions of 1868, surely there is no warrant of law for it. If they are to be read in the same paragraph, why enact the latter one? If it is to take the place of that, why say it is to be construed in conjunction with it?

Again, Mr. Chairman, the whole act of 1877 is on the theory that the Indians will remove to the Indian Territory, a thing which they never did. In article 5, page 256, it is expressly provided that these payments shall be made according to the treaty of 1868 upon a strict compliance by the Indians with their contract, and they never have complied with it. They still live in South Dakota, and never have complied with the terms.

Mr. MILLER. Mr. Chairman, in a case decided by the Supreme Court of the United States the facts are so similar to those in the case we are now considering that I think that decision throws a strong light upon this matter and should guide the interpretation of such a treaty with an Indian tribe.

As I understand the situation confronting us here, it is contended by the gentlemen who are raising this point of order that while the treaty of 1868 between the United States Government and the Sioux provided for these articles contained in the paragraph objected to, it places a period of limitation of 30 and 20 years upon it. It is claimed on the other side by gentlemen in favor of the paragraph that by the treaty of 1877 a reasonable construction thereof must require that these items are to be appropriated for annually for a much longer period than that. The gentleman from Oklahoma [Mr. FERRIS], on the other hand, further contends that it is not specifically stated in the treaty of 1877 that these benefits are to be given annually for a further period, and that therefore there is no warrant in law for them. Their position seems to be that the treaty of 1877 not specifically extending the time is to be construed against the Indians.

Now, I wish to call the attention of the Chair to a parallel case, one in relation to the Choctaws. In 1820 the Choctaws ceded to the Federal Government a large portion of their land in Mississippi, about 4,000,000 acres, on terms which specified that in part consideration of that they were to have a tract of land west of the Mississippi River, which is the land they now hold in Oklahoma. In 1830 another treaty was made with the Indians by which they ceded to the Federal Government all of their remaining land in Mississippi, consisting of more than 10,000,000 acres. In the entire treaty there was not one dollar expressed as consideration for the last cession. A great many years later there was a contention made that the Government was in duty bound to pay the Choctaws for the land in the last cession, even though the treaty did not say anything about the price to be paid. Finally the case went to the Court of Claims and, on appeal, to the Supreme Court of the United States. The case will be found in the One hundred and nineteenth United States, where the court uses language very instructive and appropriate in the consideration of the present point of order. I read, beginning on page 38 of the report:

It is true that by the eighteenth article of the treaty of 1830 it is provided that "for the payment of the several amounts secured in this treaty the lands hereby ceded are to remain a fund pledged to that purpose until the debt shall be provided for and arranged. And, further, it is agreed that, in the construction of this treaty, wherever well-founded doubt shall arise, it shall be construed most favorably toward the Choctaws." The only money payments secured by the treaty over and above the necessary expenditures in removing the Indians, in providing for their subsistence for 12 months after reaching their new homes, and paying for their cattle and their improvements are, first, an annuity of $20,000 for 20 years, commencing after their removal to the west; and, second, the amount to be expended in the education of 40 Choctaw youths for 20 years, and for the support of 3 teachers of schools for 20 years, together with the cost of erecting some public buildings, and furnishing blacksmiths, weapons, and agricultural implements, in addition to the several annuities and sums secured under former treaties to the Choctaw Nation and people. It is nowhere expressed in the treaty that these payments are to be made as the price of the lands ceded; and they are all only such expenditures as the Government of the United States could well afford to incur for the mere purpose of executing its policy in reference to the removal of the Indians to their new homes. As a consideration for the value of the lands ceded by the treaty they must be regarded as a meager pittance.

It is, perhaps, impossible to interpret the language of this instrument, considered as a contract between parties standing upon an equal footing and dealing at arm's length, as a conveyance of the legal title by the Choctaw Nation to the United States to hold as trustee for the pecuniary benefit of the Choctaw people, and yet it is quite apparent that the only consideration for the transfer of the lands that can be considered as inuring to them is the general advantage which they may be supposed to have derived from the faithful execution of the treaty on the part of the United States; and when in that connection it is considered that the treaty was not executed on the part of the United States according to its just intent and spirit, with a view to securing to the Choctaw people the very advantages which they had a right to expect would accrue to them under it, it would seem as though it were a case where they had lost their lands without receiving the promised equivalent. In such a case there is a plain equity to enforce compensation by requiring the party in default to account for all the pecuniary benefits it has actually derived from the lands themselves. This is the solid ground on which the justice of the award of the Senate of the United States under the treaty of 1855 seems to us fairly to stand.

Then, again, on page 27, the language I hold to be especially appropriate in construing the present treaties, there the court said:

As was said by this court recently in the case of the United States v. Kagama (118 U. S., 375, 383): "These Indian tribes are the wards of the Nation; they are communities dependent on the United States—dependent largely for their daily food, dependent for their political rights. They owe no allegiance to the States and receive from them no protection. Because of the local ill feeling, the people of the States where they are found are often their deadliest enemies. From their very weakness and helplessness, so largely due to the course of dealing of the Federal Government with them and the treaties in which it has been promised, there arises the duty of protection and with it the power. This has always been recognized by the Executive and by Congress, and by this court whenever the question has arisen."

It had accordingly been said in the case of Worcester v. Georgia (6 Pet., 515, 582): "The language used in treaties with the Indians should never be construed to their prejudice. If words be made use of which are susceptible of a more extended meaning than their plain import as connected with the tenor of the treaty, they should be considered as used only in the latter sense. * * * How the words of the treaty were understood by this unlettered people, rather than their critical meaning, should form the rule of construction."

The recognized relation between the parties to this controversy, therefore, is that between a superior and an inferior, whereby the latter is placed under the care and control of the former, and which, while it authorizes the adoption on the part of the United States of such policy as their own public interests may dictate, recognizes, on the other hand, such an interpretation of their acts and promises as justice and reason demand in all cases where power is exerted by the strong over those to whom they owe care and protection. The parties are not on an equal footing, and that inequality is to be made good by the superior justice which looks only to the substance of the right, without regard to technical rules framed under a system of municipal jurisprudence formulating the rights and obligations of private persons equally subject to the same laws.

The rules to be applied in the present case are those which govern public treaties, which, even in case of controversies between nations equally independent, are not to be read as rigidly as documents between private persons governed by a system of technical law, but in the light of that larger reason which constitutes the spirit of the law of nations. And it is the treaties made between the United States and the Choctaw Nation holding such a relation, the assumptions of fact and of right which they presuppose, the acts and conduct of the parties under them, which constitute the material for settling the controversies which have arisen under them. The rule of interpretation already stated as arising out of the nature and relation of the parties is sanctioned and adopted by the express terms of the treaties themselves. In the eleventh article of the treaty of 1855 the Government of the United States expresses itself as being desirous that the rights and claims of the Choctaw people against the United States "shall receive a just, fair, and liberal consideration."

I think that is exactly on all fours with the present situation. If the contention of the gentleman who has raised this point of order is correct, the Sioux Indians in South Dakota parted with a tract of land worth hundreds of millions of dollars and received absolutely nothing in return.

Mr. FERRIS. Mr. Chairman, will the gentleman yield?

Mr. MILLER. Certainly.

Mr. FERRIS. Does not the gentleman think the decision that he has just presented to the Chair more properly justifies a claim against the Government than an argument against a point of order made against the paragraph?

Mr. MILLER. Most assuredly the purpose of the case is to substantiate a claim against the Government. But what I am trying to say is that in the interpretation of a treaty, where it appears that the Government failed to pay or in specific terms to give something for what it got, then reason, justice, humanity, and law says that it shall be interpreted most favorably to the Indians, and they shall get their just demands. That is all that is asked for in this paragraph.

Mr. FERRIS. But that would be in justification of a claim against the Government rather than to make the paragraph in order.

Mr. MANN. Mr. Chairman, will the gentleman yield?

Mr. MILLER. Certainly.

Mr. MANN. If there should be a legal claim against the Government, of course that would justify an item in this bill.

Mr. FERRIS. Oh, I think the gentleman will agree that these various claims, equitable or of any character, that come in on an appropriation bill are subject to a point of order unless there be some specific authority for them. The case which the gentleman cites about the Choctaw lands is based on treaty obligations, and these are merely Executive orders.

Mr. MANN. Mr. Chairman, I will ask the gentleman from Minnesota how the case arose?

Mr. MILLER. In 1855 a treaty was entered into and it was agreed that the Senate should investigate all those pending matters and make an award. They did make an award in 1859 and appropriated $250,000 finally to pay that, and that was all that was done under that treaty. They did not carry it out. Then in 1881 we authorized them to take this to the Court of Claims, which they did.

Mr. MANN. And all they could take to the Court of Claims was a legal claim, I assume, and these people might be able to take this to the Court of Claims as suggested by the gentleman from Oklahoma; but if it is a case which they could take to the Court of Claims, then it is a case authorized by law, and if the Supreme Court sustained a claim on account of this old treaty, an item in an appropriation bill to provide for it would certainly have been in order.

Mr. FERRIS. The gentleman does not contend that under the Tucker and Bowman Act, which authorizes several committees of the House to send propositions to the Court of Claims for a finding of facts, any proposition they can refer to that court would be in order on an appropriation bill?

Mr. MANN. No; but under the Bowman and Tucker Act the Court of Claims does not enter judgment at all; nor can such a case go to the Supreme Court of the United States. So this could not have been a reference under the Bowman and Tucker Act, because it got to the Supreme Court. Here was a case where apparently the Court of Claims sustained a claim and authorized or entered a judgment, which case was appealed to the Supreme Court, and that court sustained the judgment. Unless they had a legal claim they could not have sustained a claim in the Court of Claims.

Mr. FERRIS. How does the Chair know whether they had a legal claim or not until there is some finding of the Court of Claims upon it? There has been none in this case.

Mr. MANN. Of course it is for the Chair to determine whether in his opinion this law authorizes the item in the bill. That would also be a determination as far as the Chair is concerned of whether in his opinion a claim would lie against the Government.

Mr. DAVENPORT. Mr. Chairman, will the gentleman from Minnesota yield?

Mr. MILLER. Certainly.

Mr. DAVENPORT. Mr. Chairman, I want to ask if in the Choctaw case the court does not find that there were specific provisions in the treaty that the Government agreed to perform in order that the Choctaws might move west?

Mr. MILLER. That is exactly what the court did not find. The court found that there were several little things which the Government agreed to do, but in no case did it hold that they were to be considered as a consideration. The court says they were too small and insignificant, a mere bagatelle which the Government in its general relations toward the Indians ought to give them in any event; and excluding that, there being nothing in the treaty which says the Government shall pay for these lands, justice and equity and law require that the Government shall be held as a trustee and shall be held accountable to the Indians for the proceeds of the sale of their property.

Mr. DAVENPORT. It was for specific lands to which the Choctaws held patents.

Mr. MILLER. They never had a patent to any lands in Mississippi or in any other place until they got trust patents from the Government.

Mr. DAVENPORT. The patents were limited.

Mr. MILLER. Oh, they received a grant of lands in Mississippi and Oklahoma.

Mr. DAVENPORT. I will ask the gentleman if the same court has not held that they did have a patent?

Mr. MILLER. They held that they had a title in fee, but not a patent.

Mr. DAVENPORT. Is it not a fact that the special act which gave the Choctaws the right to go into the Court of Claims referred all questions of both law and equity to the Court of Claims, with the right of appeal to the Supreme Court of the United States?

Mr. MILLER. It did; but the Supreme Court did not take exactly the same view that the Court of Claims took. The Supreme Court reviewed the entire case and decided it on the merits, having in view all the facts.

Mr. DAVENPORT. And said that equity demanded that they should comply.

The CHAIRMAN. Does that dispose of all the points of order in respect to the portion of the bill relating to South Dakota?

Mr. BURKE of South Dakota. The next item is an item for education, and a separate proposition.

The CHAIRMAN. Beginning with line 10? Is the point of order made to that?

Mr. STEPHENS of Texas. It is reserved.

The CHAIRMAN. What disposition is desired of that section?

Mr. MANN. I thought the gentleman withdrew his point of order.

Mr. FERRIS. We have not yet reached the second paragraph, have we?

The CHAIRMAN. We are now at line 10, on page 27.

Mr. FERRIS. There is another paragraph.

The CHAIRMAN. The Chair understands a point of order was made to that paragraph, beginning with line 10. The Chair wishes to know what disposition is desired as to that paragraph.

Mr. FERRIS. I make a point of order against it.

Mr. BURKE of South Dakota. I desire to discuss the item briefly, and I think I can prevail upon the gentleman to withdraw the point of order. Now, in regard to this reimbursable proposition——

Mr. FERRIS. Mr. Chairman, just a moment. I thought the point of order to the second paragraph was conceded.

The CHAIRMAN. The Chair will refer to that as soon as he runs through these authorities.

Mr. BURKE of South Dakota. Do I understand the Chair desires some time in which to consult the authorities?

The CHAIRMAN. Just a few moments.

Mr. BURKE of South Dakota. And while the Chair is going through them, may we discuss the point of order?

The CHAIRMAN. The Chair understands that while he is considering them there will be an effort on the part of the gentlemen to reach an agreement.

Mr. BURKE of South Dakota. I think the gentleman from Oklahoma [Mr. FERRIS] will concede that I am somewhat familiar with the affairs of the Sioux Tribe of Indians in South Dakota. The gentleman is proceeding on the theory—and I think other gentlemen over there are—that the United States has been spending large sums of money for these Indians, and that it has been paid out of the Federal Treasury. The gentleman has called attention to the fact that there is a trust fund in the Treasury of the United States of $3,000,000, and I assume that each one of the gentlemen on that side who have discussed this question or considered it is laboring under the impression that that $3,000,000 was put into the Treasury by the Federal Government as a gratuity, in substance, to these Indians. Let me explain the situation as to the Sioux Tribe of Indians.

In 1889 the entire western half of South Dakota, with the exception of the Black Hills, was an Indian reservation, comprising about 20,000,000 acres, and this act of 1889 provided for the cession of about 9,000,000 acres, and it provided that the land disposed of during the first two years should be $1.25 an acre and after the two years 75 cents an acre, and all land disposed of at the end of three years should be disposed of by the Government at 50 cents an acre and reimbursed to the Government. Now, then, the law also provided that all the expense of surveying under the allotment and the moneys expended for stock, and cattle, and machinery, the building of houses, should be reimbursed from the proceeds received from the sale of the 9,000,000 acres of land; and not one dollar has ever been paid to the Indians of the moneys received from the sale of that 9,000,000 acres, except that they have in the Treasury a trust fund of $3,000,000.

I would like to call the gentleman's attention to that item. It provides that the Government shall pay 5 per cent interest on this $3,000,000 and use one-half of it for education, which has been done right along. The other half may be paid to the Indians per annum, and that is the only money the Indians have received under the treaty of 1889. At the expiration of 50 years what becomes of the fund? It shall be expended for the civilization and self-support amongst the said Indians or otherwise distributed among them, as Congress from time to

time thereafter determines. In other words, we put into the Treasury as the proceeds of the Indian lands $3,000,000 and we propose to pay them interest at 5 per cent and use half of it for education, which we have been doing, pay them the other half per capita, and then at the end of 50 years we do not pay them the money at all and we still use that money for their support, civilization, and education. Now, on this question of schools, the gentleman from Oklahoma stated the other day, in reply to the answer of the gentleman from Illinois, and I want to be correct, that had he understood this paragraph that we are now discussing he never would have consented to it. Do I understand the gentleman wants to be understood as saying that he did not understand that?

Mr. FERRIS. I know that it is against the rules of the House to talk about matters occurring in committees——

Mr. BURKE of South Dakota. I am not talking about what happened in the committee.

Mr. FERRIS. I will say this item, the proposition as to whether or not the treaty had expired, was never mentioned in the committee to me.

Mr. BURKE of South Dakota. The gentleman is quite certain when he makes that statement. For the information of the committee and simply to show that the gentleman's memory is not good, because nobody would intimate, certainly, for a moment that he would make a misstatement, but in view of the large number of matters he has on his mind it is not strange that details sometimes escape his memory—but to show that his memory is not good I am going to read to the gentleman from the hearings of last year on this item, and I am going to ask if the gentleman ever heard that this was an extension of the treaty and whether he was informed in regard to the matter.

Mr. FERRIS. Just a moment. The gentleman is always generous, or usually so. Does the gentleman wish to ask me a direct question to which I told him "No"; and then refer to the hearings of a year ago?

Mr. BURKE of South Dakota. I will ask the gentleman if I understood him to say to the gentleman from Illinois [Mr. MANN] that he was not aware that this treaty had expired?

Mr. FERRIS. The gentleman understood me precisely, for I said that, and I do say it now.

Mr. BURKE of South Dakota. The gentleman will not object if I read from the hearings?

Mr. FERRIS. Will the gentleman say that there was one word uttered anywhere as to the fact of whether this treaty had expired or not?

Mr. BURKE of South Dakota. I am going to read from the hearings.

Mr. FERRIS. This year's hearings?

Mr. BURKE of South Dakota. The hearings of 1911—last year's hearings. I assume that the gentleman, being a member of the committee at the time, would carry in his mind ordinarily matters as important as this.

Mr. FERRIS. I have no recollection of it.

Mr. BURKE of South Dakota. The gentleman left me in the position, and I assented without any protest at the time, of having attempted in some manner to mislead this House. He said that I brought in a treaty here, "conjured up," I think he said, and was endeavoring to get an appropriation on a treaty that did not exist at all or had expired, namely, the treaty of 1877, and that in this item I was endeavoring to extend the treaty without its appearing so. That would be the inference, and I want to see whether he remembers this. Here is what the gentleman from South Dakota [Mr. BURKE] said:

> For the information of Mr. FERRIS, I will say that this appropriation for the support of schools among the Sioux has always been carried in a separate item in this part of the bill, because under the treaty of 1889 we were obligated to pay for the education of the Sioux, and that treaty expired, as I recall, in 1909. We have been making the appropriations since by extending the treaty, if you will notice, by that language, and it really is a gratuity, the same as the education of other Indians. This is to pay the expenses of the reservation schools generally. There are 20,000 Indians there, and instead of paying it out of the fund that is over further in the early part of the bill, it has been kept here, and I merely make this explanation so you may understand why this item is here.

Then I went on further:

> There is another reason why I prefer to have it that way. I have to come in contact with my Indians as you do with yours, Mr. FERRIS. They complain about things that we do. I call their attention to certain things. For instance, in this case I say to them, "We are giving you $220,000 that we did not agree to give to you and that we do not have to give to you. It shows that the Government is generous."
>
> Mr. FERRIS. The treaty expired in 1909?
>
> Mr. BURKE. Yes; it was a 20-year treaty.
>
> Mr. FERRIS. And, of course, now it is a gratuity?
>
> Mr. BURKE. It is a gratuity.

Now, it would seem that at that time, at least, the gentleman heard of this matter, and there was no subterfuge about it. The item bears upon its face evidence that it is an extension of that treaty from one year to another. I am simply calling it to the gentleman's attention because I do not think he intended by his remarks to put me in an attitude of deceiving or attempting to deceive the House or to deceive the committee or to seek to accomplish anything by means that were not proper. I know the gentleman did not intend to do that.

Mr. FERRIS. The gentleman states it exactly right, except in this, that the paragraph that was then under consideration was the preceding paragraph.

Mr. BURKE of South Dakota. Not at all.

Mr. FERRIS. There were not any hearings even the year before last, and none this year.

Mr. BURKE of South Dakota. It specifically refers to this item. This is the item we are discussing now.

Mr. FERRIS. But I was not discussing that item on Monday.

Mr. MANN. That was the item under consideration on Monday.

Mr. FERRIS. It was the $307,000 item.

Mr. MANN. No. That was passed over by unanimous consent.

Mr. FERRIS. I think I am in error.

Mr. BURKE of South Dakota. Yes; I think the gentleman is in error. I do this in good faith. In passing I want to say that the gentleman used some very strong language the other day about the gentleman from South Dakota calling attention to the extravagance in connection with Indian affairs in Oklahoma and pointing to economy in South Dakota. I have no recollection of having done anything of the kind. The only thing I recall as having criticized was the extravagance in regard to the appropriations in Oklahoma. Why, the gentleman from Oklahoma [Mr. CARTER] himself said the other day that $20,000,000 was expended under the Dawes Commission, and the other gentleman from Oklahoma [Mr. FERRIS] has repeatedly called attention to the great expense in the conduct of Indian affairs in Oklahoma. What I was endeavoring to do, so far as affairs in Oklahoma are concerned, was to get more money for administrative purposes there, and I was necessarily obliged to point out wherein I thought the Indians there were being wronged and why there should be more money appropriated for administrative purposes in Oklahoma.

Mr. CARTER. Mr. Chairman, it seems that the gentleman's memory is also a little bit at fault. It has not been a week since the gentleman rose on the floor of this House and discussed very bitterly the administration of affairs in connection with probate judges in Oklahoma.

Mr. BURKE of South Dakota. I spoke of Federal appropriations.

Mr. STEPHENS of Texas. Mr. Chairman, will the gentleman yield?

The CHAIRMAN. Does the gentleman from South Dakota yield?

Mr. BURKE of South Dakota. Yes.

Mr. STEPHENS of Texas. Mr. Chairman, I move that the committee do now rise.

The motion was agreed to.

Accordingly the committee rose; and the Speaker having resumed the chair, Mr. COVINGTON, Chairman of the Committee of the Whole House on the state of the Union, reported that that committee had had under consideration the bill H. R. 26874, the Indian appropriation bill, and had come to no resolution thereon.

GEORGE G. HENRY.

Mr. PUJO. Mr. Speaker, as chairman of the Committee on Banking and Currency and acting under its instructions by unanimous vote, I present as privileged the contumacy of Mr. George G. Henry, of New York, who declined as a witness to answer certain questions propounded by counsel for the committee pertinent to the inquiry being had under House resolutions 429 and 504. I submit the report (H. Rept. 1285) of the committee, with the record of the proceedings had and the questions declined to be answered as a part thereof, with the request that the Speaker certify to the United States district attorney for the District of Columbia the fact under the seal of the House, so that the said officer shall bring the matter before the grand jury of the District of Columbia for such action as may be authorized by sections 101, 102, 103, and 104 of the Revised Statutes of the United States.

I now present the report. I now move pro forma, as the statute does not require the approval of the House, but preferring to have its action thereon, that the question of the contumacy of the witness, George G. Henry, be certified by the Speaker to the United States district attorney, under and by virtue of sections 101, 102, 103, and 104 of the Revised Statutes of the United States, for such action as the grand jury may take.

The SPEAKER. The gentleman from Louisiana [Mr. PUJO] moves that the House give special authorization to the Speaker

to certify the record to the United States district attorney for the District of Columbia. The question is on agreeing to that motion.

The motion was agreed to.

INDIAN APPROPRIATION BILL.

Mr. STEPHENS of Texas. Mr. Speaker, I move that the House resolve itself again into the Committee of the Whole House on the state of the Union for the further consideration of the bill H. R. 26874, the Indian appropriation bill.

The motion was agreed to.

Accordingly the House resolved itself into Committee of the Whole House on the state of the Union for the further consideration of the bill H. R. 26874, the Indian appropriation bill, with Mr. SAUNDERS in the chair.

Mr. BURKE of South Dakota. Mr. Chairman, I am endeavoring to prevail upon the gentleman from Oklahoma [Mr. FERRIS] to withdraw his point of order, and I am not discussing the point of order. And in that connection, I want to call his attention to the fact that this $200,000 is the money that provides the agency and reservation schools upon the several Sioux reservations, and in order that the committee may know just how many schools there are, I would state that I have obtained the information from the Indian Office and will give it to the House.

There are maintained on these reservations 11 boarding schools and 60 day schools, and there are enrolled in these several schools 2,732 Indian children. I will say to the committee that the Sioux Indians are real Indians. They are not white Indians. Very few of them are of mixed blood. Within my recollection most of the Sioux Tribe were, you might say, savages, and most of them were what were known as "blanket Indians."

Now, I do not think that the gentleman from Oklahoma [Mr. FERRIS] wants to deprive the Indians of these particular schools. These are the schools that everybody is for. There is occasional objection raised to what are known as nonreservation schools, but I have never heard any objection to the schools upon the Indian reservations, schools that are right out among the Indians. The pupils attend them the same as the white children go to our country district schools.

Of course, if the gentleman is objecting to the item because of the extension of the treaty, I am quite willing to eliminate that, and would offer the amendment in a different form. If the gentleman insists upon the point of order, of course, I will concede it, and offer the amendment in a form without that language which makes it subject to a point of order.

And I will say to the gentleman, for the purpose of saving time, that if he will indicate his position it has been suggested by the gentleman from Illinois [Mr. MANN] that, perhaps, we might proceed with the bill while the Chairman is looking up these authorities, and recur to this item when he is ready to hear us on the point of order.

Mr. FERRIS. I will give the gentleman a statement of my position. The gentleman from South Dakota asked me to withdraw the point of order which was temporarily reserved to the paragraph in lines 10 to 16, inclusive, on page 27 of the bill, which appropriates $200,000 for schools in South Dakota.

My answer to the gentleman in that regard is that I am heartily in favor of these schools, and I have no doubt that at least some of them ought to be maintained; but the policy has been so well laid down by the gentleman, both while he was chairman of the committee and in almost every utterance of his, that where the Indians have large farms and large means they ought to pay their own way as far as possible. My position is that unless this be made reimbursable from their fund, they having $3,000,000 in cash and having $41,015,702.05 in property——

Mr. BURKE of South Dakota. Does the gentleman think we have a right to disturb the $3,000,000 pending the 50 years?

Mr. FERRIS. About that there can be no question. Congress can disturb any fund that the Indians have.

Mr. BURKE of South Dakota. Would it not be a violation of a solemn treaty obligation or agreement that was made with these Indians?

Mr. FERRIS. Oh, not at all. The gentleman is disturbing them continually, and right in this bill we are withdrawing appropriations for schools all the way through.

Mr. BURKE of South Dakota. Then I understand the gentleman will make the point of order.

Mr. FERRIS. I want to be heard a moment, first. I think I will make the point of order. I will repeat again that in the State of South Dakota they have 20,000 Indians who have $3,000,000 in cash and have property amounting to $41,015,702.05. In this State they have three Indian schools specifically provided for. They have the same rights to the general lump-sum fund the rest of the Indians have, it amounting to $1,420,000.

Mr. MARTIN of South Dakota. What property does the gentleman refer to?

Mr. FERRIS. I refer to the property of the Indians. I get it from the statement. The gentleman can get it.

Mr. BURKE of South Dakota. How is it classified?

Mr. FERRIS. It is found on page 6 of Document No. 486. It is available in the document room.

Mr. BURKE of South Dakota. I am quite familiar with the document, but I should like to ask the gentleman if that report shows what this property consists of and how it is classified.

Mr. FERRIS. It says "value of property and funds belonging to the Indians."

Mr. BURKE of South Dakota. Made up by somebody in the Indian Office.

Mr. FERRIS. If the gentleman will allow me to proceed for a moment, South Dakota has three schools specifically provided for, with 20,000 Indians. My State of Oklahoma has approximately 120,000 Indians, and we have only one school specifically provided for in the entire State out of the funds of the Federal Government. Every cent of the other expenses of the five-tribe schools is paid for from tribal revenues.

Mr. BURKE of South Dakota. I want to correct the gentleman.

Mr. FERRIS. Let me proceed. The gentleman has had plenty of time. In our State one school is specifically provided for and we have 120,000 Indians, or two-fifths of all the Indians of the United States. Every bit of the other expense for the entire five tribes of Indians is paid out of their own fund. We had thought on day before yesterday that perhaps there ought to be some gratuity appropriation for the Indian schools. The House thought otherwise. Certainly it can not be harmful to have a rule of universal application, and unless the gentleman will submit an amendment making this reimbursable, I feel it a duty to make the point of order. There certainly should be some uniformity about these appropriations. To appropriate from the Federal Treasury in one place and the Indians in another place is all wrong.

Mr. BURKE of South Dakota. Before the gentleman submits the point of order, will he answer a question?

Mr. FERRIS. I will if I can.

Mr. BURKE of South Dakota. I understand the gentleman to say to the House that not a dollar is expended for schools for the Indians in Oklahoma except at the Chilco School.

Mr. FERRIS. In the Five Tribes.

Mr. BURKE of South Dakota. But what about the Indians outside of the Five Tribes?

Mr. FERRIS. There is no school specifically provided for. I think they use a little of the general fund. There certainly is no school specifically provided for.

Mr. BURKE of South Dakota. They are provided for out of the $1,420,000 item.

Mr. FERRIS. I think that applies to the few scattering tribes in the west of the State, but not to the Five Tribes.

Mr. BURKE of South Dakota. Not to the Five Tribes; and when the gentleman says Oklahoma, he refers to the Five Tribes. There are a number of schools in Oklahoma.

Mr. FERRIS. Not one is specifically provided for except the Chilco School, and the children from Kansas use that school quite as much as the Oklahoma children do.

Mr. BURKE of South Dakota. I concede that this item is subject to a point of order, and I send to the Clerk's desk the following amendment.

Mr. MANN. What has become of the point of order?

Mr. BURKE of South Dakota. I concede it.

Mr. MANN. Before the point of order is determined, the item appropriates for the support and maintenance of day and industrial schools among the Sioux Indians.

Mr. BURKE of South Dakota. Will the gentleman permit me to call his attention to the fact that the item extends the treaty of 1889 until June 30, 1914, which is legislation?

Mr. MANN. Of course, the entire item is included in the point of order.

Mr. BURKE of South Dakota. Certainly. Now, I have offered an amendment with that eliminated. I thought perhaps the gentleman did not understand.

Mr. MANN. I thought the point of order was being made on the other ground.

Mr. BURKE of South Dakota. No.

The CHAIRMAN. The point of order is sustained to the paragraph in the bill, and the gentleman from South Dakota sends up an amendment, which the Clerk will report.

The Clerk read as follows:

Page 27, after line 9, insert the following:
"For support and maintenance of day and industrial schools among the Sioux Indians, including the erection and repairs of school buildings, $200,000."

Mr. FERRIS. I make a point of order against that. The treaty has expired, and it is so conceded, and is new legislation not authorized by law.

Mr. BURKE of South Dakota. Now, Mr. Chairman, if the Chair desires time to consider the other point of order, it has been suggested by the gentleman from Illinois that this point of order be passed for the time being.

The CHAIRMAN. The Chair is ready to rule on the point of order. The point of order made by the gentleman from Oklahoma [Mr. FERRIS], is to the effect that the obligations imposed by the act of 1877 are impressed with a time limit by reason of the reference in section 5 of that act to the act of 1868. In view of this contention it is necessary to consider both the act of 1868, and the act of 1877. Under the act of 1868 the contracting parties respectively assumed certain obligations for value furnished, and to be furnished. The treaty of 1868 was one of limited duration. Later, by the act of 1877 the same contracting parties, entered into new relations on the part of the Indians an exceedingly valuable tract of land, a principality one might say, was ceded to the United States. This cession is referred to in the section cited by the gentleman from Oklahoma [Mr. FERRIS], which in part is as follows:

ART. 5. In consideration of the foregoing cession of territory and rights and upon full compliance with each and every obligation assumed by the said Indians, the United States does agree to provide all necessary aid to assist the said Indians in the work of civilization; to furnish to them schools and instruction in mechanical and agricultural arts, as provided for by the treaty of 1868.

It is insisted by the gentleman from Oklahoma that this reference to the treaty of 1868 is intended to furnish a time limit for the discharge of the obligations imposed by the act of 1877, that limit being the limit fixed in the treaty of 1868. From the language that the Chair has read it will be seen that there was a cession of property, by the Indians, so that a new consideration was afforded for any obligations, or undertakings on the part of the United States toward the other contracting parties.

It is also insisted by the gentleman from Oklahoma that in the agreement of 1877 the Indians undertook on their part to go to the Indian Territory, and failing to carry out this undertaking, they have lost their rights against the United States. If the committee will bear with me, I will give the substance of so much of the act of 1877, as relates to the suggested change of habitation to the Indian Territory. (See p. 255.)

The Indians agreed that a delegation of five or more chiefs and principal men from each band should without delay visit the Indian Territory to examine the land, with a view to making it a permanent home, and if on this examination the report should be favorable, and satisfactory to their principals, that is, the Sioux Indians, then the Indians agreed that they would make the change. But a condition precedent was the investigation of this new territory, and the requirement that the recommendation, if favorable should be satisfactory to the Sioux Indians. Until this condition precedent was discharged, there was no obligation whatever on the part of the Indians to change their habitat.

No evidence has been adduced to show that any delegation on the part of the Sioux made the investigation contemplated, or that if they did, and made a report, this report was satisfactory to the principals. Hence there is no reason to conclude that the Sioux have ever incurred any obligation to remove to the Indian Territory, or failed in any duty in this respect.

Referring again to the section of the act of 1877 in which reference is made to the treaty of 1867, the Chair will cite anew the language used in that connection.

ART. 5. In consideration of the foregoing cession of territory and rights and upon full compliance with each and every obligation assumed by the said Indians, the United States do agree to provide all necessary aid to assist the said Indians in the work of civilization; to furnish to them schools and instruction in mechanical and agricultural arts, as provided for by the treaty of 1868.

Obviously there are two meanings that may be given to this reference to the treaty of 1868. First, the one suggested by the gentleman from Oklahoma that it is intended thereby to fix a time limit on the obligations of the United States under the act of 1877. Second, that it was intended to save description in the second act and to use the language of the treaty of 1868 to show in detail what was intended by, and comprehended under the words "to provide all necessary aid to assist the said Indians in the work of civilization, to furnish to them schools, and instruction in mechanical and agricultural arts." Under the first suggestion it will be seen that the United States would secure an immensely valuable tract of land, for practically no consideration. If the second view is the correct view, then the United States is merely thereby held to the discharge of obligations which, in the light of what this Government has received from these Indians, are essentially reasonable.

If the interpretation of this treaty is in doubt, then this doubt must be resolved by resort to the fundamental principles for the interpretation of treaties, or agreements between a great nation like ours, and aboriginal savages. Obviously these contracting parties are not on an equal footing, and dealing at arm's length. Hence in the construction of the language under consideration, as between the two conflicting views, that one should be adopted which is most favorable to the weaker, and practically, helpless party, and which in addition conforms to essential justice by requiring the United States to afford adequate return for the highly valuable consideration furnished by the other contracting party.

The Chair concludes therefore that the reference made to the treaty of 1868 was not intended to impose the limitations of the treaty of 1868 on the obligations assumed by the act of 1877, but was designed to save words, and avoid a restatement in detail of what the Government assumed to do, when it undertook to provide all necessary aid.

Another thing, to which the Chair wishes to call attention is that the act of 1877 and the treaty of 1868 seem to be most highly regarded. I find in the act of 1809 a most unusual provision, to the effect that anything that occurs in the treaty of 1868, and the agreement of 1877 is to be held as in force anything in the act of 1889 to the contrary notwithstanding.

Of course, as a rule as between subsequent and antecedent acts, if there is any conflict between the two relating to one subject matter, there is a repeal by implication of the former act, but in this instance it is provided that in case of conflict the subsequent statute shall give way to the antecedent acts. This provision clearly shows that this Government reestablished by the act of 1889 in the most emphatic fashion, the rights of the Indians under the treaty of 1868, and the agreement of 1877.

Since these agreements are made the repository of the Indians' rights, they should be favorably construed in their interests according to the principles cited.

Looking to the treaty of 1868 and the agreement of 1877 it is clear that the Government undertook to do many things for the Indians, and specifically agreed to assist them in the work of civilization.

It is familiar authority that once a policy is established by law, Congress may appropriate to carry out that policy, and provide for the agents and agencies, fairly within the same. If a department is authorized to make investigations, an appropriation bill may provide for the agents needed for this purpose. Under the head of assisting these Indians in the work of civilization, many things may be appropriated for.

The Chair will not take up any further time of the committee, but looking to the provision for the payment of teachers, for physicians, blacksmiths, and additional employees, as well as for the other items it is perfectly clear that if there is no time limit on the obligations of the Government under the act of 1877, and this has been fully discussed, then there is an existing obligation on the part of the Government of the United States to make those appropriations to which the point of order relates. The Chair, therefore, overrules the point of order.

Mr. FERRIS rose.

The CHAIRMAN. The gentleman from Oklahoma is recognized.

Mr. MILLER. Mr. Chairman, a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. MILLER. Mr. Chairman, I desire to make a motion in respect to the paragraph as to which the point of order has been overruled. If we pass that now, I presume I would lose the right of making that motion, and I desire to be recognized now to offer an amendment in respect to that paragraph.

The CHAIRMAN. The Chair has already recognized the gentleman from Oklahoma.

Mr. FERRIS. Mr. Chairman, I will yield to the gentleman.

Mr. MILLER. Mr. Chairman, I notice the language in the paragraph that has just been under discussion is:

For support of Sioux of different tribes, including Santee Sioux of Nebraska, North Dakota, and South Dakota.

I would like to ask the gentleman from South Dakota if he can inform the committee whether any of the funds herein provided for are ever used to take care of the Sioux who remain across the border of South Dakota in Minnesota who are members of the Santee Sioux.

Mr. BURKE of South Dakota. Mr. Chairman, I think not. Do I understand that this item is now open for amendment.

Mr. MANN. Certainly it is.

Mr. BURKE of South Dakota. Very well; let the gentleman offer his amendment.

Mr. MILLER. Mr. Chairman, I offer to amend by inserting, after the word "Nebraska," in line 20, page 26, the word "Minnesota."

Mr. BURKE of South Dakota. Mr. Chairman, I make the point of order upon that, or, if the gentleman desires it, I will reserve the point of order.

Mr. MILLER. Mr. Chairman, I would like to say a few words to the committee in respect to those Indians, who are the brothers of the Santee Sioux, remaining in Minnesota, and I will take only a moment or two. About a year ago I received information that those Indians, who have now no tribal relations and no property rights, their treaty rights having been declared null and void by the act of Congress of 1863, are, and for some time have been, in exceedingly destitute circumstances. They do not live anywhere near where I do, but many hundreds of miles away. I understand they are without land. They make such precarious living as they can make by doing a little trapping in the wintertime and working about in the summer time. Last year, and in the years previous to that, they made somewhat of a living by catching frogs for the Twin City market, but that now they have lost, by reason of the change in climatic and topographic conditions.

Mr. MANN. Mr. Chairman, will the gentleman yield?

Mr. MILLER. Certainly.

Mr. MANN. If they are Sioux Indians, are they now covered by the language of the paragraph?

Mr. MILLER. I am inclined to think so, but I do not think the department has ever taken care of them, and I want to make it certain.

Mr. MANN. The gentleman will note that there are two parts of that paragraph. One relates to the Santee Sioux Indians, which is a treaty obligation pure and simple under a special treaty, and the other paragraph relates to the Sioux Indians generally, excepting certain tribes that are specifically mentioned, and there is an appropriation of $200,000 for subsistence.

Mr. MILLER. I thought by inserting the word "Minnesota" it would make it definite.

Mr. MANN. And inserting the word where the gentleman proposes would not affect the appropriation of $200,000 for subsistence.

Mr. MILLER. The Sioux I am speaking of are a part of the Santee band. The term "Santee Sioux" is not a scientifically accurate description. It has been applied to those Sioux and their bands to whom they are related who participated in the Sioux massacre in 1862 in Minnesota, most of whom were subsequently moved to Nebraska.

Mr. STEPHENS of Texas. Will the gentleman state the name of the band that he has in mind?

Mr. MILLER. It is not named. They are those Indians who remained in Minnesota who were not transferred to Nebraska at the conclusion of the Sioux outbreak in 1862.

Mr. STEPHENS of Texas. I do not think this language would confine it to any State, but to the Sioux Indians of the United States.

Mr. BURKE of South Dakota. Mr. Chairman, to save time I make the point of order. I think the gentleman from Minnesota will concede it.

Mr. MILLER. Mr. Chairman, I have no doubt that it is subject to a point of order.

Mr. BURKE of South Dakota. They are outlaw Indians, and they are not a party to the treaty of 1868 or the treaty of 1877.

Mr. MILLER. Mr. Chairman, I do not agree with the gentleman on that. The only basis upon which it has ever been claimed by the department that they are not entitled to immediate recognition by the passage of an act of Congress is that they were bound as parties to the treaty of 1889.

Mr. BURKE of South Dakota. Mr. Chairman, I will say that the reason I have consented to report a bill on one or two occasions for their relief was upon the theory that they were not a party to that treaty.

Mr. MILLER. I do not think they were, but they are getting it both coming and going, and they are in a very unfortunate situation. They are Indians most of whom rendered the whites very important service at the time of that unfortunate outbreak. They had their property taken from them by legislative action, and now they are destitute and suffering. I concede the point of order.

The CHAIRMAN. The Chair sustains the point of order.

Mr. BURKE of South Dakota. Mr. Chairman, I desire to ask the gentleman from Texas a question. In line 3, page 27, was the word "river" inserted after the word "Cheyenne" by unanimous consent?

Mr. STEPHENS of Texas. Yes; it was inserted on Tuesday.

Mr. BURKE of South Dakota. If there is any doubt about that, I would suggest that that amendment be now made.

The CHAIRMAN. The Chair understands from information at the desk that it was inserted.

Mr. FERRIS. Mr. Chairman, I reserved the point of order upon the amendment offered by the gentleman from South Dakota [Mr. BURKE]. There is no authorization of law for the appropriation.

Mr. BURKE of South Dakota. Mr. Chairman, I will ask the gentleman, so far as I am concerned, to make the point of order, and then we can discuss it if it is desired. I do not care to discuss further the merits of the proposition except I want to say to the gentleman that in the last few minutes I have received this information from the Indian Office: Since the act of 1889 there has been expended under that act for the Sioux $6,834,000 for all purposes. That does not include the moneys that have been appropriated under the treaty of 1877, but it does include this $3,000,000 trust fund, and on December 31 the account had been credited with $5,332,000, and not a dollar paid to the Indians.

Mr. MARTIN of South Dakota. Mr. Chairman, upon the point of order I think clearly that it is not well taken. The provision of the treaty of 1877, section 5—the one commented upon by the Chair in rendering the decision—is the educational provision. It provides that the United States shall furnish all necessary aid to civilization, including industrial and mechanical schools, as provided in the treaty of 1868. I knew that these lines, from 10 to 16, on page 27 of the bill, had been read at the time I addressed the Chair upon the former point of order, and my entire remarks were addressed to the educational clause of section 5, which the Chair commented upon. I think the obligation there is clearly to continue the educational facilities indefinitely. They were in force for 20 years by the treaty of 1868, and 12 years of that was still running when this treaty was made. And one of the considerations of that treaty of 1876–77, the one, indeed, as enumerated in the treaty of 1875, is the aids to civilization and the maintenance of mechanical and industrial schools. I think that obligation is clearly on the Government, and I think that is entirely covered by the ruling already made on the other point of order.

Mr. BURKE of South Dakota. Mr. Chairman, I understood the gentleman from Oklahoma [Mr. FERRIS] had not really made the point of order, and I suggested that he make the point of order, and then I assumed he would discuss it, when I wanted to reply to him. And that was the reason I sat down without discussing the point of order.

Mr. FERRIS. I do make the point of order, Mr. Chairman, because there is no legislation for it, and, not only that, in the hearings, on page 347, of last year, the gentleman from South Dakota [Mr. BURKE] admits it is a treaty, and admits the treaty expenditure in 1909, and because the Chair has during the consideration of this very bill ruled out an item which was a gratuity, and admits the treaty expenditure in 1909, and because the Chair has during the consideration of this very bill ruled out an item which was a gratuity for schools, certainly this is subject to a point of order.

Mr. BURKE of South Dakota. Mr. Chairman, I hope the Chair will not be affected in his decision, and I apprehend he will not be, by what I may have conceded a year ago as to this being a gratuity. I am frank to admit that at the time I was laboring under the impression that it was a gratuity, and that I did not consider the provisions of the treaty of 1877 went as far as they do, and as the Chair has held. Now, we make every year an appropriation for the education of Indians of $1,420,000, and I want to call the attention of the Chair to Hinds' Precedents, volume 4, section 4205, because I think it ought to be in this debate as to the extent to which we may go in appropriations for the support and education, and so forth, of Indians. Section 4205 says:

> The Committee on Indian Affairs has a broad jurisdiction of subjects relating to the care, education, and management of the Indians, including the care and allotment of their lands.

And then it goes on to state:

> On December 6, 1888, the resolutions distributing the President's message used this language relating to the jurisdiction of the Committee on Indian Affairs, giving to that committee so much "as relates to the care, education, and management of the Indians." This language has been used for a long time in these resolutions; and the committee has exercised a broad jurisdiction as to the care of Indians on the reservations, and in Indian Territory while that reserve existed as a separate territory, and also as to the care and preservation of Indian lands and the allotment in severalty.

Now, I think, we are justified under that in making appropriations for education, even if they are not specifically authorized. And in this instance the treaty of 1877 clearly includes the education as part of the civilization, and I think the Chair in his ruling referred to education in connection with the language in that part of the agreement.

Mr. MANN. Mr. Chairman, for my part, I believe I would be glad if the Chair would find that, under the law, he could sustain the point of order. The item is:

For the support and maintenance of day and industrial schools among the Sioux Indians.

One of the first items in the bill is:

For support of Indian day and industrial schools not otherwise provided for and for other educational and industrial purposes in connection therewith, $1,420,000.

All through the bill there are items carrying appropriations for the maintenance and support of schools and pupils in schools.

The item to which I have referred, of $1,420,000, is not under any treaty obligation, it is not to carry out any agreement that the Government has with the Indians, but it is sustained so far on the broad power that the Indians are wards of the Government, and that, under the policy which the Government has maintained, it has the right to appropriate money for their education and for industrial schools.

Two or three years ago I made a point of order against the Florida item, which was for the support and maintenance, I believe, of Florida Indians. I thought at that time that that item was subject to a point of order. Whoever was in the chair at that time, after an examination of the general statutes in regard to the Indians under the control of the United States, held that it was within the power of the Government, if authorized by law, to make an appropriation for their support, maintenance, and civilization. If, however, the Chair can find a way to rule that the Government is not authorized under existing law to maintain these industrial schools and these day schools, as well as the colleges scattered throughout the country called Indian schools, I hope the Chair will take the opportunity to say that there is no authorization of law for this purpose, because, undoubtedly, it would result in the saving of millions of dollars a year which the Government now expends for useless Indian schools.

The CHAIRMAN. Does the gentleman from Oklahoma [Mr. FERRIS] desire to be heard?

Mr. FERRIS. Mr. Chairman, I did not want to more than suggest that this is the normal situation: The paragraph is brought in with the specific provision that the treaty is continued another year. A point of order is made, and the point of order is conceded.

The gentleman then immediately reoffered that part of the paragraph, save and except the authority which he admits he did not have.

Now, can the Chair be asked to find that a portion of this paragraph was in order when the other part, which was the very foundation upon which the whole paragraph stands, has been conceded to be out of order, and even has been withdrawn?

I do not care, Mr. Chairman, to pursue it further.

The CHAIRMAN. Before ruling on the point of order the Chair will cite the first portion of article 5 of the act of 1877 which is as follows:—

ART. 5. In consideration of the foregoing cession of territory and rights, and upon full compliance with each and every obligation assumed by the said Indians, the United States does agree to provide all necessary aid to assist the said Indians in the work of civilization; to furnish to them schools and instruction in mechanical and agricultural arts, as provided for by the treaty of 1868.

If the Chair is correct in thinking that the reference in this section, to the act of 1868—and he has, heretofore, endeavored to give somewhat in extenso the reasons for the following conclusion—merely means to say that the details of the aid, education and instruction which the United States undertakes to afford, are set out in the act of 1868, and those details without tedious repetition are made a part of the latter agreement, just as a later deed without formal recital, refers to and adopts the descriptive matter of a prior conveyance, then, of course, there is no time limit upon the obligations assumed in the act of 1877.

If there is no time limit upon these obligations, then they are obligations of a continuing character. Hence this paragraph affords ample authority for an appropriation for the support of day and industrial schools for the Sioux Indians.

The treaty specifically declares, in the section just read to the committee, that the United States will provide all necessary aid to furnish these Indians with schools, and instruction in mechanical and agricultural arts.

If authority for these schools, may be found in the paragraph cited, and it is so found, then there is authority for the amendment, and the point of order is not well taken.

Mr. FERRIS. Mr. Chairman, I offer an amendment to the amendment.

The CHAIRMAN. The Clerk will report the amendment offered by the gentleman from Oklahoma [Mr. FERRIS] to the amendment offered by the gentleman from South Dakota [Mr. BURKE].

The Clerk read as follows:

Amend the amendment by adding at the end of the amendment, "reimbursable from any funds in the Treasury of the United States belonging to said Indians."

Mr. BURKE of South Dakota. Mr. Chairman, I reserve a point of order on the amendment to the amendment. If the gentleman from Oklahoma [Mr. FERRIS] does not wish to discuss the merits, I will make the point of order. Of course, I will be guided by what he desires.

Mr. FERRIS. I think the Chair can rule.

Mr. BURKE of South Dakota. Then, Mr. Chairman, I make the point of order. I will state that the Chair has just held that it is in order under the treaty of 1877 to include this item. It is an obligation of the Government, and therefore it would violate existing law when it is proposed to make an amendment carried in the item reimbursable from any funds in the Treasury belonging to these Indians.

The CHAIRMAN. But it makes a reduction of the expense to the Government, so that the Holman rule becomes operative. As to the propriety of it, the Chair does not say.

Mr. BURKE of South Dakota. I did not suppose that the Holman rule would go so far as to relieve the Government of an obligation that it had contracted to fulfill under an agreement or treaty made with a tribe of Indians, and I doubt if it goes to that extent.

The CHAIRMAN. The Chair would suggest that that is a question of propriety put up to the House for its action, not a question of parliamentary ruling. The House can do a thing that may be improper. Without undertaking to make that criticism of this particular proceeding, the Chair will say that the House is competent to do it. The Chair is merely commenting on the parliamentary status of it. The Chair would think that that amendment would be in order. The question is on the amendment to the amendment.

Mr. MARTIN of South Dakota. Mr. Chairman, I would like to be heard a moment on the merits of this proposition. Here is a conceded obligation of the Government to furnish these educational facilities to these Indians, for which they have given ample consideration.

Mr. STEPHENS of Texas. Mr. Chairman, I will call the gentleman's attention to the fact that that part of the amendment does not touch the treaty at all—no part of it. It stops with the words, "two hundred thousand dollars." This is an amendment to support the day and industrial schools amongst the Sioux Indians, and so forth.

Mr. MARTIN of South Dakota. Yes; but the Chair has very properly held, within a few moments, that the treaty obligations of the Government of the United States, under the treaty of 1876 confirmed by the act of 1877, require that there should be provided these educational facilities for these Indians which this appropriation of $200,000 will cover. Therefore the obligation is upon the Government to make the appropriation.

Now, then, the gentleman from Oklahoma [Mr. FERRIS], not being able to raise a point of order against the item, because it is in order, because it is based upon a contractual obligation of the Government, proposes by an appeal to numbers, if it can be done, to vote away the Government's obligation to keep its treaties and to take the money of our wards and reimburse ourselves for keeping our treaty obligations, and undoubtedly create a claim in the Court of Claims on the part of these Indians, to be litigated and eventually reimbursed. I appeal to the good sense as well as the sense of fairness of the members of this committee not to be led into any such ridiculous attitude by the extremity of the gentleman from Oklahoma in a parliamentary situation.

Mr. STEPHENS of Texas. Mr. Chairman, will the gentleman yield?

The CHAIRMAN. Does the gentleman from South Dakota yield?

Mr. MARTIN of South Dakota. Yes.

Mr. STEPHENS of Texas. The gentleman, I know, is aware that I am disposed to be fair to the Indians of South Dakota as well as those of Oklahoma, and no one regrets more than I do that this controversy has arisen between the two States. Unfortunately in reporting the bill, as the chairman of the

committee, I was placed in the peculiar attitude of opposing this appropriation, and I now think and believe that the appropriation both for the schools of Oklahoma and those of South Dakota should have remained in the bill.

Mr. MARTIN of South Dakota. I apprehend, then, upon this vote the gentleman will support us.

Mr. STEPHENS of Texas. I do not think the contentions of the gentleman from South Dakota are correct.

Mr. MARTIN of South Dakota. In other words, the gentleman thinks two wrongs will make one right.

Mr. STEPHENS of Texas. I do not think so at all, but I believe the statement made in this document, 209, Indian schools and agencies, 1912, will convince the gentleman that a great injustice has been done Oklahoma. I find that the State of Oklahoma, with 17,250 children, has $2,241,248 worth of school property. That is $13 per capita. I find that the gentleman's State of South Dakota has $314 per capita of school funds and school property. The difference, then, between the way Oklahoma is treated and the way South Dakota is treated is as 13 is to 314. I notice that the gentleman and that side of the House were very swift to strike from this bill everything that could be stricken from it in aid of this $13 per capita for Oklahoma and to prevent anything being taken from the $314 for South Dakota.

Mr. MARTIN of South Dakota. The gentleman does me an injustice. At least whether it be an injustice or not, he is mistaken. I was not present when the Oklahoma item was stricken out. I did not know it was stricken out until after I came to the House this morning.

Mr. MANN. This side of the House had nothing to do with it, except that I made the point of order on my own responsibility, and will continue to make a great many more before the gentleman is through with the Indian appropriation bill, nor will I be deterred by threats of this kind.

Mr. STEPHENS of Texas. Will the gentleman point out what threat I have made just now?

Mr. MANN. The gentleman proposes to retaliate.

Mr. STEPHENS of Texas. I propose to see that justice is done between the different sections of this country.

Mr. MANN. I will continue to make points of order against any and every paragraph in the gentleman's bill whenever I deem it proper to do so.

Mr. STEPHENS of Texas. I hope the gentleman will not be in a position to do that.

Mr. MANN. But I shall be. I shall be here. The gentleman need not worry about that. I shall be right here.

Mr. BURKE of South Dakota. Mr. Chairman, I want to say to the gentleman from Texas [Mr. STEPHENS], who has always been extremely fair and courteous to me, both when he was a member of the minority and since he has been chairman of the committee, that he seems to involve me in the matter of the elimination from the bill of an item of appropriation for schools in Oklahoma, when I had absolutely nothing whatever to do with it at all. I did not make any point of order. I never said one solitary word on the subject. Now, if the gentleman rises in his place and makes a point of order and the Chair sustains the point of order, there ought not to be any disposition on the part of the committee to do something that is contrary to what I perhaps am standing for. I am not responsible for the point of order nor for the action of the Chair in sustaining it. I want to say that I never take exception to any Member making a point of order. He has that privilege, and in the exercise of his rights as a Member on this floor, if he believes that an item ought not to be in the bill because it is not authorized by law, and he makes a point of order against it, I am fair enough to say that I believe he is actuated by honest motives, and that he is simply carrying out what his conscience dictates, and I never have acted and never will act in retaliation because a point of order was made against an item that I was interested in. In the present instance the point of order was made by somebody else.

Mr. MARTIN of South Dakota. Mr. Chairman, I believe I have the floor.

Mr. BURKE of South Dakota. I thought the gentleman from Texas had the floor.

Mr. STEPHENS of Texas. Does the gentleman think it is just and right that Oklahoma should have only $13 per capita in school property, while the gentleman's State has $314?

Mr. BURKE of South Dakota. I can not see what bearing that has upon the question, how much Oklahoma has or how much Montana has.

Mr. STEPHENS of Texas. If you have $314, as stated here, should it not be reimbursable, when you have $41,000,000 of property in your State to reimburse it from?

Mr. BURKE of South Dakota. I may say that the committee is furnishing a spectacle of something new to me in my experience in the brief time I have been here. I do not think I have ever before seen a committee come into the House and attempt to make points of order against their own bill. That is unusual, but it seems, from what the gentleman from Texas [Mr. STEPHENS] has just said, that it is done because the gentleman from Illinois [Mr. MANN], who has the habit of making points of order pretty frequently, made a point of order against an item in the bill and the point of order was sustained by the Chair. Now, when any item is reached that a member of the minority of the committee happens to be interested in, because it is in his State, the attitude of the majority is to try to eliminate it. I do not believe that is fair, and it has been my opinion that there has been some feeling indulged in here. Certainly there has been none on my part. I have no feeling whatever.

Mr. STEPHENS of Texas. The gentleman can not say that I have any feeling.

Mr. BURKE of South Dakota. I think the gentleman has been neutral, but as chairman of the committee I think he ought to stand up and defend his bill rather than assist in assaults that are being made upon it from either side of the House. One of the functions of the chairman of a committee ordinarily is to come in and maintain the bill which his committee has reported and which he has helped to frame and not to assail it on the floor.

Mr. STEPHENS of Texas. I have heard the gentleman from Illinois [Mr. MANN] on that side insist that these funds ought to be reimbursable when the Indians have large funds in the Treasury. Here are $41,000,000 in the Treasury for the use of only 20,000 Indians, while they have $348 per capita of school property and of money that is going to them annually for these purposes for each child.

Mr. MARTIN of South Dakota. May I ask the gentleman——

Mr. STEPHENS of Texas. Oklahoma has only $35 of school property and of money that can be annually expended.

The CHAIRMAN. All this is to be understood as coming out of the time of the gentleman from South Dakota, and his time has expired.

Mr. MARTIN of South Dakota. I ask unanimous consent for five minutes more.

The CHAIRMAN. The gentleman from South Dakota asks unanimous consent that his time be extended five minutes? Is there objection?

There was no objection.

Mr. MARTIN of South Dakota. Now, we are brought to this absurd proposition: The gentleman from Texas [Mr. STEPHENS], the chairman of this great Committee on Indian Affairs, has not only intimated but he has stated that he proposed to oppose an item that he helped to put into this bill, in cooperation with the other members of the committee, which item the Chairman of this Committee of the Whole has held here in the last 20 minutes is to be maintained under treaty obligations. The chairman of the Committee on Indian Affairs proposes to lend himself by his vote and his influence to defeat that item because, forsooth, some days ago, when I did not have the fortune to be in the room, although he has accused me of being connected with it, another item for the State of Oklahoma was objected to and a point of order made against it by the minority leader, the gentleman from Illinois [Mr. MANN], and went out upon a point of order, from which we may assume that there was no legal basis for maintaining it in the bill.

Mr. STEPHENS of Texas. Is the gentleman aware that this amendment is no part of the bill reported to the House?

Mr. MARTIN of South Dakota. The amendment is the precise section of the bill, except that it leaves off certain language which was subject to a point of order. The item is a proper item.

Mr. STEPHENS of Texas. It makes this item reimbursable.

Mr. MARTIN of South Dakota. It was not reimbursable, and we can not make it reimbursable because it is based on treaty obligations, which would create a liability in the Court of Claims.

Now, Mr. Chairman, it seems to me that we ought not to be led into this absurd position. I understood that the item with reference to Oklahoma that went out the other day was a provision for common schools. I have understood that a great many white children attended these common schools. I know nothing about that item or its merits, but I do know that this particular item is to maintain the Indian schools inside the Indian reservations, and I know that the Sioux Indians paid for it in one of the most valuable properties on the continent; that it has yielded $150,000,000 in gold up to date and yields about $10,000,000 every year. I know that the Government of the

United States can not escape paying for it by the action of certain gentlemen who are getting restless on account of another item going out of the bill, and I am surprised that the gentleman from Texas, the chairman of the committee, should lend his aid to it because another item that did not have a point to stand upon is not in his bill.

Mr. STEPHENS of Texas. Mr. Chairman, I believe the gentleman asked the question how many white people are interested in the schools, and I will say to the gentleman that on the eastern side of Oklahoma the Indian gets 85 cents for each child, a magnificent sum, while in the State of South Dakota you have three schools with several hundred Indians, and they get the magnificent sum of $167 per capita, and that is the advantage of living in South Dakota rather than in Oklahoma.

Mr. MARTIN of South Dakota. Well, there are other advantages, I hope. I do know that this advantage, whatever it is, has been paid for by these Indians, and that they are entitled to realize upon it. I know by a personal visitation to these schools that they are Indian schools—industrial, mechanical schools—and that the benefits are going exclusively to the Indian children. I know of no white children that attend these schools.

Mr. MILLER. Mr. Chairman, I sincerely hope that the gentleman who offered the amendment will not press it, or if he feels for any reason that he must, I hope that the amendment will not prevail. It looks to me as if this is one of the most unfortunate quibbles that has come to us in handling the Indian question for a long time.

We are now dealing with the simple question of fulfilling the treaty obligations with the Sioux Indians. I do not know, Mr. Chairman, whether we should have $200,000 for this purpose or whether we should have $100,000 or $50,000 or $500,000. As to the exact amount needed I have no information and I profess none, but I do know, Mr. Chairman, that whatever amount we put in this item, if we make it reimbursable we have created a claim in behalf of these Indians against the Government of the United States. I do know that we have repudiated a solemn, sacred obligation, and have done it in broad daylight; we have done it after the most full discussion, and it has been done by men who ought to stand here and champion the Indian cause wherever found rather than to stand here and urge upon Congress provisions whereby the Government breaks its obligations. A broken obligation means a claim; a claim means lobbyists and lawyers and the scandals that follow.

This Government to-day is face to face with many of the deeds of the past that were wrong, some of which we are trying to right. Now, for God's sake, do not write another chapter of the same kind. Cut it down if it must be, raise it if it must be, but do it right; do it as the treaty said it should be done, and stand up and face it as it should be faced.

I can readily see, Mr. Chairman, if this is taken as a precedent, if we are to let the difficulties of the present moment—some of the animosities created by the little debate during the last three or four days—get control of the Indian legislation, for the next six months or a year great wrong will be done, not to urselves, because we can not hurt ourselves, but to the Indians, whose guardians we are and who are helpless wards of ours. They are the ones to suffer.

Now, it does seem to me that this is more like boys' play than it is like the conduct of dignified men on an important subject. As I understand, it all arose because of the knocking off of one paragraph in the bill relating to Oklahoma. The gentlemen of the committee know, I suppose, without any question, that I myself thought that that was subject to a point of order, but I never thought of making it. I would vote for it if it came in now, and I will tell you why: Because I know that before this bill becomes a law it will be a part of it, and I would like to have the gentlemen who represent Oklahoma in this House get credit for it, if there is any credit in the act, before the people of their State.

Mr. MARTIN of South Dakota. Will the gentleman yield?

Mr. MILLER. Certainly.

Mr. MARTIN of South Dakota. Is it claimed, in reference to the Oklahoma item, with which I have no familiarity, that it is in the bill by virtue of a treaty obligation?

Mr. MILLER. No; it has no foundation in law. It has nothing to justify it. It is a pure gratuity, a pure gift, and one that is rather unfortunate, because it is giving something to the common schools of the State.

Now, Mr. Chairman, I myself have been a little emphatic—perhaps too emphatic—but I appeal to the good common sense of that side of the aisle that they will let this question before us be considered in a fair and impartial manner. It is about time that we ended the bickering back and forth across the aisle. Gentlemen across the aisle know that there are important matters now pending in which they and their people are deeply interested, and I do not believe that they want to start a fight all along the line.

Mr. FERRIS. Mr. Chairman, if it were not for the seeming unfairness of the remarks of gentlemen, I would not say anything at this time. This is an anomalous situation that prevails in reference to this paragraph. The Indian Office during the preparation of this bill undoubtedly recognized fully that the treaty expired in 1909, and they drew the paragraph explicitly extending it for another year, as it has been done annually since the treaty formally expired. I shall not stop there; I will take the testimony of the gentleman from South Dakota, who was for many years chairman of the committee. The gentleman from South Dakota knows more than any other man here about Indian affairs in Dakota, and I will read his words, to which I am indebted to him for calling my attention. I will read from the hearings (page 347) of last year, when this precise item was under consideration. Here is the language:

> Mr. BURKE. For the information of Mr. FERRIS I will say that the appropriation for the support of schools among the Sioux has always been carried in a separate item in this part of the bill, because under the treaty of 1889 we were obligated to pay for the education of the Sioux, and that treaty expired, as I recall, in 1909. We have been making the appropriation since by extending the treaty, if you will notice by that language, and it really is a gratuity, the same as the education of other Indians. This is to pay the expenses of the reservation schools generally. There are 20,000 Indians there, and instead of paying it out of the fund that is over further in the early part of the bill, it has been kept here, and I merely make this explanation so you may understand why this item is here.
>
> Commissioner VALENTINE. It would be an item to add to the $1,400,000 if it were not here in this part of the bill.
>
> Mr. BURKE. There is another reason why I prefer to have it that way. I have to come in contact with my Indians as you do with yours, Mr. FERRIS. They complain about things that we do. I call their attention to certain things. For instance, in this case I say to them, "We are giving you $220,000 that we did not agree to give to you and that we do not have to give to you. It shows that the Government is generous.
>
> Mr. FERRIS. The treaty expired in 1909?
>
> Mr. BURKE. Yes; it was a 20-year treaty.
>
> Mr. FERRIS. And, of course, now it is a gratuity.
>
> Mr. BURKE. It is a gratuity.

Mr. Chairman, certainly what chastisement I have had, what chastisement the chairman has had, as to the proposition that we are here fighting an item that we are bound to support by treaty, must, of necessity, be exploded. That reverts to the original question of whether or not they should pay this from their own funds. I care nothing about the "animosity" talked about back and forth. There is no "animosity" so far as I am concerned. I want to call attention to the fact that I think these Indians are more than well to do. They are worth $41,000,000 in property, and here is the report that gives their property. They have $3,000,000 and over of cash in the Treasury.

The treaty expired in 1909 by the words of the commissioner, by the words of the gentleman from South Dakota [Mr. BURKE], and by the words of the law itself. If there be anything about the theory that we shall have the Indians pay where they are able to pay, my amendment should be adopted. If there is nothing about the theory that the Indians should pay when they have money to pay, my amendment should be defeated. Every item in the State of Oklahoma, except one, so far as the Five Civilized Tribes are concerned, for schools is paid for out of the Indian money. No item in this State of South Dakota, either for agency or for schools, is paid out of the Indian money, but in each case it is paid out of the Federal Treasury. There are 20,000 Indians in South Dakota, and they are worth $41,000,000, and they do not pay one penny for the service that is rendered them in the schools and in the various agencies. There are 10,000 Indians of the Five Tribes in Oklahoma, and they have $6,000,000 in the Treasury, and they pay every cent of their school expense. I merely ask that as to this one item this House vote to let the Indians pay where they are able to pay, as they do in other States. I do not know what the vote on this amendment may be. Personally I care not. I merely want to call it to the attention of the House, and the House can do what it sees fit.

Mr. BURKE of South Dakota. Mr. Chairman, I would like to speak briefly in response to what the gentleman from Oklahoma has stated.

Mr. STEPHENS of Texas. Mr. Chairman, I ask unanimous consent that all debate on this paragraph and all amendments thereto close in 10 minutes, 5 minutes to be used on each side.

Mr. MADDEN. Make it 20 minutes.

Mr. MANN. I would like to have 5 minutes.

Mr. STEPHENS of Texas. Mr. Chairman, we must get through with this bill to-day, and I think we had better stay here to-day until the bill is finished.

Mr. BURKE of South Dakota. Make it 10 minutes.

Mr. MANN. I want 5 minutes.

Mr. KAHN. Make it 15 minutes.

Mr. STEPHENS of Texas. Then I ask unanimous consent that all debate close in 15 minutes, 10 minutes to be consumed on that side and 5 minutes on this.

The CHAIRMAN. The gentleman from Texas asks unanimous consent that at the end of 15 minutes, 10 minutes of which to be used by the minority side of the House and 5 by the majority side of the House, debate on the pending paragraph and all amendments thereto shall cease. Is there objection?

There was no objection.

Mr. BURKE of South Dakota. Mr. Chairman, the gentleman from Oklahoma [Mr. FERRIS] read from the hearings of last year wherein I stated that this appropriation was a gratuity. I presume he read it for the benefit of a Member or of Members who might be in the committee now who were not present when I read the same thing a short time ago. I read all of that that the gentleman from Oklahoma read. It is true that when this item was being considered in the committee a year ago I did state that it was a gratuity. I had in mind only the obligation of the 1889 treaty, which was limited in its provisions to 20 years. I did not consider at that time the obligation of the Government to provide education in connection with the civilization of these Indians, and since that time I have done so; and I have argued here to-day to the able chairman, who has only recently rendered a decision in which he holds it is not a gratuity. If the gentleman from South Dakota did state in 1911, at some time or at some place or somewhere, that it was a gratuity, that does not overrule the decision of the very able lawyer who fortunately presides over these deliberations upon this occasion. It does not overrule the law, as the gentleman from Illinois [Mr. MADDEN] very aptly suggests to me. I appreciate the high compliment paid me by the gentleman from Oklahoma, overlooking the sarcasm, but I am free to say that I appreciate that I am not entitled to any such encomium as the gentleman gives me, because I do not know all about Indian affairs, and there is a great deal more that I do not know than there is that I do know about the subject. I am not priding myself on having extraordinary knowledge on the subject of Indian legislation, but I know what the situation is at the present time, namely, that the chairman has held that this is a treaty obligation, and when I made a point of order against the amendment which proposes to make it reimbursable the Chair overruled the point of order upon the ground that it reduces the expenditure from the Federal Treasury under the Holman rule, and was not subject to the point of order. I appeal to members of the committee upon both sides of the Chamber that we ought not violate a sacred obligation that we have entered into with these Indians, to appropriate money for education and make it reimbursable when it is a violation of the treaty obligations.

Mr. FERRIS. Mr. Chairman, will the gentleman yield?

Mr. BURKE of South Dakota. Certainly.

Mr. FERRIS. Does the gentleman really, honestly in his heart think that treaty is still in full force and effect?

Mr. BURKE of South Dakota. I do.

Mr. FERRIS. Then the gentleman believes to-day what he knows last year was not so.

Mr. BURKE of South Dakota. I have frankly stated what I said at that time, and it does not matter what I stated. That does not change the law. It does not change the ruling made by the Chairman. I appeal to gentlemen on that side of the Chamber that we ought not, because we have the power, by reason of force of numbers, and because we have a rule called the Holman rule, which permits amendments which otherwise would not be in order, to do a wrong and reimburse or make reimbursable against the Indians money that we have contracted by treaty to expend for them. Whenever we do that we furnish the foundation for a claim against the Government, and, heaven knows, we have had enough scandal in connection with Indian claims in the amounts that have been paid in attorneys' fees to these lobbyists who hang around this Capitol digging up anything that they can find wherein a treaty obligation may have been technically violated, so that they may bring in a claim against the Government.

And I hope that that side of the House will not, as I have already stated, vote to make reimbursable this appropriation in the face of our obligation that we will expend it from the Public Treasury.

Mr. MANN. Mr. Chairman, the Chair a moment ago was called upon to make a ruling upon the amendment offered by the gentleman from Oklahoma [Mr. FERRIS], and held that it was in order under the Holman rule. I have no criticism to make of the Chair or the ruling under the circumstances. It was made without argument. I do not think, and I wish to put my statement on record, that it was in order under the Holman rule. That rule provides that a matter shall be in order which shall retrench expenditures by the reduction in salary of the officers of the Government, which is not this case. Second, by the reduction of the compensation of any person paid out of the Treasury of the United States, which is not this case. Third, by the reduction of amounts of money covered by the bill, which is not this case, because there is change in the amount of money either covered by the bill or offered by the amendment.

Now, Mr. Chairman, a moment ago we were met by a very frank avowal by the gentleman from Texas [Mr. STEPHENS], the chairman of the Committee on Indian Affairs, who has the pending bill in charge. He stated to the House frankly and honestly that because I had made a point of order against one or two items—I made a point of order against two, but I do not know whether he included both—in the bill, where Oklahoma was interested, that, therefore, the point of order having been sustained by the Chair, gentlemen on that side of the House proposed to retaliate by striking out——

Mr. STEPHENS of Texas. I deny the statement. It is untrue.

Mr. MANN. It is not untrue. That was the gentleman's statement.

Mr. STEPHENS of Texas. Let it go in the RECORD. We will see who is right.

Mr. MANN. By striking out an item in which the senior Republican member of that committee is interested. I will ask the gentleman frankly what his statement was, then?

Mr. STEPHENS of Texas. The RECORD will show. It will show that you have not stated it correctly.

Mr. MANN. I have stated it correctly. If the gentleman does not change the RECORD, and I will see he does not——

Mr. STEPHENS of Texas. Does the gentleman insinuate that I would change the RECORD?

Mr. MANN. I did not say so. I have seen the gentleman change the RECORD before——

Mr. STEPHENS of Texas. Do you mean that I have changed the RECORD here? If you do, it is untrue and false.

Mr. MANN. I do not mean to insinuate anything. The gentleman is requiring a good deal of patience, not only on my part but on the part of the whole House, in the conduct of the Indian appropriation bill. The gentleman stated, and it will so appear in the RECORD, that because items had been stricken out relating to Oklahoma therefore he proposed to vote to strike out an item relating to South Dakota. In effect, that was his statement. Mr. Chairman, I made the point of order. I am responsible for it. I never have made a point of order in this House on items in appropriation bills which had anything to do with politics. I do not make points of order against items in which Members are interested because they are Republicans or because they are Democrats. But if the Democratic House concludes that because a gentleman on the Republican side of the House makes a point of order in which a Democratic Member is interested, and which is sustained, therefore they will retaliate by striking out an item in which a Republican Member is interested, it will be drawing the line where no favors will be asked and no favors will be granted. Gentlemen on both sides of this aisle know perfectly well that the amenities between gentlemen are preserved in the House regardless of politics, and it is the first time I ever have heard in the House of Representatives during my service here, the chairman of a great appropriation committee declaring that he proposed to punish one of the minority because another Member of the minority had had stricken out of the bill on a point of order, sustained by the Chair, an item in which a Member of the majority was interested.

But if it is a matter of favors and retaliation, commence. We will be there when it is going on.

Mr. STEPHENS of Texas. Mr. Chairman, just a word. I desire to state that I did not use the word "punish," and did not intend to so use it, and the gentleman knows it very well.

Mr. FERRIS. Mr. Chairman, I want to make an inquiry. I am quite anxious to do nothing wrong, either under pressure or without pressure, and I do not think I have. But let me inquire of the Chair, if I may now, if the Chair at this time is of the opinion that this treaty is still in full force and effect, and I ought not to offer my amendment? I can not help but believe that when the Commissioner of Indian Affairs thinks the treaty expired in 1899—and the gentleman from South Dakota [Mr. BURKE] thought so then, and I think so now—I was justified in offering the amendment.

Mr. MADDEN. Will the gentleman yield to me for a minute? Is it possible the gentleman from Oklahoma [Mr. FERRIS] and the gentleman from South Dakota [Mr. BURKE] and the Com-

missioner of Indian Affairs, who might not have looked up the law, could make a wrong statement, not knowing the facts?

Mr. FERRIS. Undoubtedly, that is true.

Mr. MADDEN. And is it not infinitely better to rely on the chairman, who has looked up the law, and let us quit this bickering?

Mr. FERRIS. In response to the gentleman, I will say that it is entirely correct; but I am not sure that the long deliberation of the Committee on Indian Affairs in making up this bill and the unusual ability of the gentleman from South Dakota [Mr. BURKE], the former chairman of the committee, should be overlooked.

Mr. CARTER. I would like for the RECORD to read that this comes in my time. I wish to get in on this proposition.

Mr. BURKE of South Dakota. I thought the gentleman from Oklahoma [Mr. FERRIS] made an inquiry.

Mr. FERRIS. I did. Does the Chair, in face of the law now before him, and in face of the bill, think this treaty is in full force and effect, and does he think the Federal Government is obligated to make this appropriation under this treaty out of the Government funds?

The CHAIRMAN. Well, as to the first inquiry, as to whether the agreement of 1877 furnishes authority to make this appropriation, the Chair is not in doubt. There can be no reasonable question of the obligation of the United States under that agreement. Of course this conclusion is merely the best judgment of the Chair upon the statutes before him, and with the opportunity that has been afforded for investigation. In the construction of contracts between parties who are not on an equal footing, some account should be taken of that fact. In this instance the United States was dealing with savages, and must be regarded as having an advantage over them. The Government was dealing with its wards. So that, in construing any portion of that agreement, if a question of doubt arises, that doubt must be resolved by an interpretation most favorable to the weaker party. This principle is very clear.

Mr. FERRIS. If the Chair will pardon me, I would like to say——

The CHAIRMAN. The Chair was in the act of passing to the next proposition. We find a reference in one act to an antecedent treaty. This reference is susceptible, it is suggested, to two meanings. The Chair does not think it is really susceptible to more than one, but the Chair can understand that in the judgment of others this language may be charged with another meaning. One interpretation is in favor of the Indians because it continues indefinitely an obligation assumed by the Government. The other is against the Indians because it imposes a time limitation upon the discharge of this obligation.

Now applying the principle of favorable interpretation for the weaker party, the Chair is very clearly of the opinion that the reference to the antecedent act was not intended to prescribe a short-time limitation for the discharge of the obligation of the Government.

In this connection it must be borne in mind, as a further ground for holding that no limitation was intended, that additional valuable consideration was afforded by the Indians under the agreement of 1877. This fact furnishes an additional cogent reason for concluding that the United States was required to furnish additional valuable consideration on its part. The Chair therefore has no difficulty in concluding that in consideration of the territory ceded, the United States agreed to extend its undertaking to assist the Indians in the work of civilization, and that this obligation is in full force.

Mr. FOWLER. Mr. Chairman, I would like to make a further inquiry. At the time of the passage of the act of 1877 the act of 1868 had not expired by 11 years.

The CHAIRMAN. Yes; it had not expired. The Chair will not be certain as to the precise time.

Mr. FOWLER. It was made on February 29, 1868, with a limitation of 20 years.

The CHAIRMAN. Yes.

Mr. FOWLER. Then in 1877 an agreement was made between the two contracting parties, as the Chair has detailed, the United States on one side and the Sioux Indians on the other, in which the Black Hills property was involved.

The CHAIRMAN. In which a valuable consideration moved from the Indians to the Government.

Mr. FOWLER. I concede the force of the argument of the Chair, but in 1889, on the 2d day of March, as I recollect, the treaty of 1868 was extended for another 20 years. May I inquire of the Chair as to what he thinks the object of Congress was in extending the treaty of 1868 if the act of 1877 was intended to be perpetual?

The CHAIRMAN. The Chair can hardly answer that as a question of parliamentary law. The Chair will say that that same act to which the gentleman refers expressly provides that everything in the act of 1877, anything in the act of 1889 to the contrary notwithstanding, should be perpetuated, and it gave it a new life, so to speak.

Mr. FOWLER. It was limited, as the Chair well knows, to a period of 20 years.

The CHAIRMAN. The Chair is trying to do the best he can with the parliamentary situation.

Mr. FOWLER. But I am anxious to know what effect the Chair thinks the act of Congress had upon this situation by extending the period 20 years.

The CHAIRMAN. That phase of the situation the Chair has not considered at all, and the Chair is not undertaking to rule on that. This is a matter of a good deal of importance, and the Chair is simply trying to do the best he can toward the solution of a parliamentary proposition which involves some legal principles. It seems to the Chair that the simplest way to get a final solution of it—and a far more authoritative one than the Chair can give—is to take an appeal from the decision of the Chair and let the committee itself settle it.

Mr. CULLOP. Mr. Chairman, I suggest that the matter be passed over until the Chair can have time to look up the authorities.

The CHAIRMAN. The Chair fully examined into this matter and explained the different steps in the transaction. Into that particular phase referred to by the gentleman from Illinois [Mr. FOWLER], which is not before the committee, the Chair has not examined.

Mr. CULLOP. It was in view of that that I made the suggestion which I have just offered.

Mr. CARTER. Mr. Chairman, can I be recognized for five minutes?

The CHAIRMAN. The Chair will recognize the gentleman for five minutes, in view of what has happened.

Mr. CARTER. Mr. Chairman, there seems to have arisen a mistaken impression about the procedure in the House to-day. The gentleman from Illinois [Mr. MANN] certainly misunderstood the gentleman from Texas [Mr. STEPHENS]. What I understood the gentleman from Texas to say was that he favored this amendment because it tended to equalize the school benefits that were being derived by the two States. If I was mistaken in that, I ask that the gentleman from Texas correct me. There seems also to be a general mistake about certain gentlemen on this side of the House taking umbrage at the action of the gentleman from Illinois for exercising his privilege in making a point of order against the provision of $300,000 for the schools of the State of Oklahoma. Let me assure the gentleman there is no soreness on this side. The gentleman from Oklahoma [Mr. FERRIS], it is true, was very much interested in that item. The gentleman from Texas [Mr. STEPHENS] was also interested in the item. But I think that was, in a sense, considered my item, since most of the funds would be spent in the districts represented by my colleague from Oklahoma, Mr. DAVENPORT, and myself.

So if anyone should take umbrage at the gentleman from Illinois it would certainly be one of us. I insisted that the matter go in the bill when it was under consideration in the committee, and by the assistance of my colleague, Mr. FERRIS, and the gentleman from Texas [Mr. STEPHENS] it did go in; but while we regret the loss of this relief to our State, no one takes any offense at the gentleman from Illinois [Mr. MANN] and no ill feelings are cherished against him for exercising his privilege as a Member of the House in objecting to this item.

But, Mr. Chairman, I am going to vote for this amendment under consideration now because, as has been stated by the gentleman from Texas [Mr. STEPHENS], it tends to equalize the benefits that are being derived by two States, which difference should be adjusted as equally as possible. You all heard the statement of the gentleman to the effect that the State of South Dakota has $314 school privileges per Indian and the State of Oklahoma only $13 per capita Indian population.

Mr. BURKE of South Dakota. I think the gentleman from Texas will correct the gentleman from Oklahoma. He did not make that statement.

Mr. CARTER. That was my understanding.

Mr. STEPHENS of Texas. Per capita of Indian children.

Mr. BURKE of South Dakota. The gentleman was only referring to three nonreservation schools.

Mr. STEPHENS of Texas. If the gentleman will examine the document from which I read, he will find that it includes the value of all the school property, and you must remember——

Mr. BURKE of South Dakota. That is not the point that the gentleman stated.

Mr. STEPHENS of Texas. You must remember that you have a number of schools there.

Mr. CARTER. I intended to quote, as nearly as possible, the statement of the gentleman from Texas.

Mr. BURKE of South Dakota. Perhaps I did not understand it.

Mr. CARTER. I intended to state that the gentleman from Texas [Mr. STEPHENS] had stated in his remarks that the State of South Dakota had already $314 per capita in school benefits, improvements, or whatever you might call them, and that the State of Oklahoma had only $13. That was my understanding of the statement of the gentleman from Texas.

Mr. STEPHENS of Texas. That is correct.

Mr. BURKE of South Dakota. Do I understand the gentleman to say that we have in school property for the benefit of South Dakota $314 for each Indian?

Mr. STEPHENS of Texas. For each Indian reported by this report.

Mr. CARTER. That is what I understood the gentleman to say.

Mr. BURKE of South Dakota. I confess that I do not understand the proposition.

Mr. CARTER. The proposition is just what the gentleman from South Dakota stated it, exactly.

Mr. MANN. We have several million dollars' worth of property in my State for each Indian. How does that affect the question?

Mr. BURKE of South Dakota. I do not understand what the point is that the gentleman is trying to make. The property in the Five Civilized Tribes is certainly greater in value than all the property of the Indians in South Dakota three or four times over.

Mr. STEPHENS of Texas. That is the school population, and the school population is given in South Dakota and also in Oklahoma.

Mr. BURKE of South Dakota. Indian school population?

Mr. STEPHENS of Texas. Indian school population, Indians in school. Then, estimating the school property, schoolhouses and plants, that they have, it gives Oklahoma $13 per capita and South Dakota $314.

Mr. BURKE of South Dakota. I can not understand what the gentleman's point is.

Mr. CARTER. Did I understand the gentleman to say $31 or $13?

Mr. STEPHENS of Texas. Thirteen dollars.

Mr. CARTER. I understood the gentleman to give the figure at $13 in his first statement.

Mr. STEPHENS of Texas. Per capita of the Indians in school.

Mr. CARTER. The gentleman stated that South Dakota has Indian school property, for Indians, $314 per capita Indian population, and Oklahoma only $13.

Mr. BURKE of South Dakota. Where did the gentleman get any such statement?

Mr. CARTER. From the statement of the gentleman from Texas.

Mr. BURKE of South Dakota. I do not think the gentleman from Texas will make that statement.

Mr. STEPHENS of Texas. Will the gentleman permit me to explain how that is? There are, I think, three schools in the State, and they have very valuable plants. You have several hundred Indians attending those schools, and the estimate is about $167 per capita for each of those Indians. Oklahoma has only one school. Oklahoma has 120,000 Indians. In South Dakota you have only 20,000 Indians. Oklahoma has about six times as many Indians as South Dakota. That is the difference.

The CHAIRMAN. The time of the gentleman has expired. All time has expired.

Mr. FERRIS. I ask unanimous consent to make a statement for one minute.

The CHAIRMAN. The gentleman from Oklahoma asks unanimous consent for one minute. Is there objection?

There was no objection.

Mr. FERRIS. Mr. Chairman, I offered this amendment because I thought the treaty expired in 1909. I offered it because I thought that was the judgment of the commissioner and because, in the hearings of 1911, on page 347, the gentleman from South Dakota said it is a gratuity and admits that the treaty expired in 1909. Now, if the judgment of the Chair is that that treaty has not expired, I do not desire to take the responsibility of offering an amendment to make them pay out of their funds in the face of a treaty, and so far as I am concerned I withdraw the amendment. [Applause.]

The CHAIRMAN. If there be no objection, the amendment will be considered as withdrawn. The question now is on the amendment offered by the gentleman from South Dakota.

The amendment was agreed to.

The Clerk read as follows:

For subsistence and civilization of the Yankton Sioux, South Dakota, $14,000.

Mr. MARTIN of South Dakota. Mr. Chairman, I ask unanimous consent to return to line 18, page 26, for the purpose of offering an amendment.

The CHAIRMAN. The gentleman from South Dakota asks unanimous consent to return to line 18, page 26, for the purpose of offering an amendment.

Mr. STEPHENS of Texas. I object.

Mr. MARTIN of South Dakota. I should like to say to the gentleman that, as I have already explained, I was out of the Chamber when that paragraph was read the other day, being out of the city. If he desires to object under those circumstances——

Mr. STEPHENS of Texas. I did not catch the statement of the gentleman.

Mr. MARTIN of South Dakota. I say I was unavoidably away from the city when this item was read. I do not desire to take up time unnecessarily, but I apprehend the gentleman does not understand the matter.

Mr. STEPHENS of Texas. What is the object of the gentleman?

Mr. MARTIN of South Dakota. I want to offer an amendment to increase the item for general repairs and improvements to the Indian school at Rapid City, S. Dak., from $5,000 to $9,000, in accordance with the recommendation of the bureau.

Mr. STEPHENS of Texas. The gentleman will not find in this bill any allowance for new improvements, and we can not afford to single out this one school.

Mr. MARTIN of South Dakota. The gentleman has perhaps overlooked the fact that the justification for this increase is stated by the commissioner to be as follows:

There will also be needed about $9,000 for the general repairs and improvements to the buildings and grounds. This is a very conservative estimate for this purpose.

I have found nothing in the hearings to indicate that any new or other information had come before the committee, and I know personally that this appropriation is needed.

Mr. STEPHENS of Texas. I can not agree to go back for that purpose, when we have uniformly refused to allow such items as that.

The Clerk read as follows:

For pay of one physician for Indians under the superintendent of the Shivwitz School, Utah, $500.

Mr. MURDOCK. Mr. Chairman, I move to strike out the last word.

Mr. STEPHENS of Texas. If the gentleman from Kansas will pardon me, I desire to dispose of another matter with reference to New Mexico, and then I will yield to the gentleman.

Mr. MURDOCK. Mr. Chairman, I withdraw my pro forma motion.

Mr. STEPHENS of Texas. Mr. Chairman, I ask unanimous consent to return to page 10, line 17, to insert a new paragraph by way of amendment.

The CHAIRMAN. The gentleman from Texas asks unanimous consent to return to page 10 to insert a new paragraph. Is there objection?

There was no objection.

Mr. STEPHENS of Texas. Now, Mr. Chairman, I offer the following amendment, which I send to the desk.

The Clerk read as follows:

For the construction of a bridge across the Gila River on the San Carlos Apache Indian Reservation, Ariz., $45,500, and for the construction of a bridge across the San Carlos River on said reservation in said State, $19,800, to be immediately available, said bridges to be constructed across said streams in the places and manner recommended by the Secretary of the Interior in House Document No. 1013, Sixty-second Congress, third session; in all, $65,300, which said sum of $65,300, with interest thereon at the rate of 3 per cent per annum, shall be reimbursed to the United States by the Apache Indians having tribal rights on the Fort Apache and San Carlos Indian Reservations, and shall be and remain a charge and lien upon the lands, property, and funds belonging to said Apache Indians until paid in full, principal and interest.

Mr. STEPHENS of Texas. I understand this amendment is satisfactory to all the parties interested.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas.

The amendment was considered and agreed to.

Mr. STEPHENS of Texas. Mr. Chairman, I desire to submit another amendment.

Mr. MANN. There was an amendment pending, on page 17, line 17, which was passed over, and I think the gentleman from Texas is about to offer one in place of that.

Mr. STEPHENS of Texas. Mr. Chairman, I ask unanimous consent to withdraw the amendment that was pending to line

17, page 17, considered on Tuesday last, and offer a substitute which I send to the desk.

The CHAIRMAN. Without objection, the request of the gentleman from Texas will be granted.

There was no objection.

The Clerk read as follows:

Page 17, line 17, insert the following paragraph:

"For the construction of a bridge across the San Juan River at Shiprock, N. Mex., on the Navajo Indian Reservation, to be immediately available, $16,500, which said sum of $16,500, with interest thereon at the rate of 3 per cent per annum, shall be reimbursed to the United States by the Navajo Indians, and shall be and remain a charge and lien upon the lands, property, and funds belonging to said Navajo Indians until paid in full, principal and interest."

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas.

The amendment was considered and agreed to.

Mr. FOWLER. Mr. Chairman, I desire to make an inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. FOWLER. I understood the Clerk to read that the amendment applies to line 17, page 17.

Mr. STEPHENS of Texas. That was a mistake; it comes in after line 16.

Mr. FOWLER. I ask, then, Mr. Chairman, that the amendment be considered as applying after line 16, page 17.

The CHAIRMAN. That has been corrected.

Mr. STEPHENS of Texas. Now, Mr. Chairman, the gentleman from Kansas moved to strike out the last word and withdrew it, and I now yield to him.

Mr. MURDOCK. Mr. Chairman, I would like to ask the chairman of the committee about a dispatch that I found in the New York Herald of last Tuesday, which reads as follows:

[Special dispatch to the Herald.]

SEEKS REPORTS OF SPECIAL INSPECTOR.

ANDOVER, MASS., *Tuesday.*

Prof. Warren K. Moorehead, one of the most energetic members of the Board of Indian Commissioners, says the great majority of the surviving North American Indians are in a far worse situation to-day than at any time since the discovery of America.

"That this is true," said Prof. Moorehead, "no man or woman familiar with Indian history will deny. It is only those persons who are not on the inside, so to speak, who assume that because we are spending several millions of dollars a year in maintaining our Indian Bureau the Indian problem is a thing of the past.

"It is a welcome sign that the public is at last aroused and that the Herald and other newspapers all over the United States are agitating a new Indian policy. While they all agree as to the essential features of this policy—the welfare of the people and the safeguarding of property rights—there is considerable discussion as to how this desired end is to be brought about.

"I am sorry the reports of E. B. Linnen, special inspector for Secretary Fisher, can not be made public. If the American taxpayers could realize what is in those reports such pressure would be brought to bear upon Congress that appropriations would be immediately available for the best possible men to save the American Indians before it is too late. Mr. Linnen has recently visited the leading reservations, and what he has seen and reported upon would seem more natural to have occurred in India in the poor districts or in darkest Russia, rather than in the United States. Nobody can deny the conditions; they are open to the eye of any traveler."

Mr. MURDOCK. I would like to ask the gentleman what are the Linnen reports, and if there are any Linnen reports, why should not they be made public?

Mr. STEPHENS of Texas. That is a question easier asked than answered. Two weeks ago my attention was called to this matter. Behind that I will say that last fall while in the West I heard of the same matter, and I know something of the conditions surrounding the Southern Ute Indian Reservation. There seems to be a trader there exploiting the Indians to his own advantage, and he is charged with standing in with the Indian agent, purchasing horses and animals not needed and padding the accounts of the agency.

I am satisfied that there is something very crooked in that agency. So, believing that, two weeks ago I wrote the department asking them to furnish us with the record. They have failed to do so up to this moment, and yesterday I received a letter saying they were not ready yet to give the information. The report was made last September and has been in the hands of the Indian Department since that time. If the statements made by this man Linnen are true, these men ought to be in the penitentiary instead of holding office under the Government.

Mr. MURDOCK. The gentleman does expect eventually to get the report?

Mr. STEPHENS of Texas. I expect to get that report if it can be obtained by the power of this House.

Mr. MILLER. As I understand the inquiry of the gentleman, it is as to the entire report of Mr. Linnen.

Mr. MURDOCK. Yes. It seems that Special Inspector Linnen has made an investigation of all of the reservations in the United States—not only the Southern Ute Reservation—and that these reports are now in the Department of the Interior. If they revealed any such condition as this dispatch indicates, the House should have those reports at once—dealing not only with the Southern Ute Reservation but with all the reservations.

Mr. STEPHENS of Texas. Mr. Chairman, I would like to make this statement, that the letter from the commissioner which I received yesterday in reply to the letter which I had written him requesting him to forward the statement of Mr. Linnen to the committee was to the effect that they were still examining the matter, and that when they were through examining it they would report, or words to that effect.

Mr. COOPER. When was it filed?

Mr. STEPHENS of Texas. About six months ago.

Mr. MURDOCK. And as soon as the matter is concluded the House is to have the report?

Mr. STEPHENS of Texas. That is the statement of the commissioner.

Mr. COOPER. When was this Linnen report filed in the Interior Department?

Mr. STEPHENS of Texas. It must have been in September last.

Mr. MILLER. If the gentleman will permit me, I think I can throw some light on the matter.

Mr. COOPER. Then they have been examining that report through September, October, November, December, and a part of January and are not yet ready to submit it to the House?

Mr. STEPHENS of Texas. It has not been submitted.

Mr. COOPER. Does not the gentleman think that a report of that kind, which bears on the affairs of the Indians, ought to have been presented to the House and to the country before we take up this general appropriation bill for the Indians?

Mr. STEPHENS of Texas. I think so. I think they have had ample time.

Mr. COOPER. Why has not the committee insisted upon that?

Mr. STEPHENS of Texas. It had not come to our knowledge at that time. I had heard rumors of this matter while in the West on a recent visit, and when I came back here I got further information about the matter from private sources. I did not get it from the department at all. Then I wrote to the department and asked them to forward me the report of Mr. Linnen.

Mr. COOPER. Will the gentleman from Kansas yield to me further?

Mr. MURDOCK. Yes.

Mr. COOPER. Does the gentleman from Texas think that any report submitted by an inspector to a department ought to be kept secret?

Mr. STEPHENS of Texas. I do not. I think it is the public property of the Government.

Mr. COOPER. Has anybody in a department the authority to keep a report of that kind secret?

Mr. STEPHENS of Texas. They exercise the authority, whether they have it or not.

Mr. COOPER. Does the gentleman, who has made a study of this question for a long time, think there is any authority to suppress a report of that kind?

Mr. STEPHENS of Texas. I think not; though this is the second time I have known of it being done.

Mr. DAVENPORT. At this session of Congress?

Mr. STEPHENS of Texas. Yes.

Mr. MURDOCK. The chairman knows that we can reach this report through a resolution in the House.

Mr. STEPHENS of Texas. I thought we could get it more quickly without the resolution.

Mr. MURDOCK. If the special report of Special Agent Linnen should be withheld, the chairman of the committee proposes to go after the report through the agency of a resolution in the House?

Mr. STEPHENS of Texas. Yes; unless it is returned to the committee at once.

The CHAIRMAN. The time of the gentleman from Kansas has expired.

Mr. MURDOCK. Mr. Chairman, I move to strike out the last two words. Am I correct in my surmise that the report of this inspector covers all of the reservations in the United States?

Mr. STEPHENS of Texas. Only that one reservation. This man, Mr. Linnen, is a general inspector for the whole United States and is subject to the order of the Secretary of the Interior, and he was sent to this special place to make this report, and did make the report and filed it, I am informed, in September last. I do not know what his report discloses, except what I have heard. I desire to state that the gentleman from Arizona [Mr. HAYDEN] suggests that he has made other reports upon other reservations. That is his business.

Mr. MURDOCK. My understanding was, as this dispatch relates, that he had found a deplorable condition virtually in all reservations.

Mr. STEPHENS of Texas. Possibly so. This is the only one that has been called to my attention.

Mr. CARTER. Mr. Linnen is a regular inspector of the department. It is only a short time ago that he unearthed the fraud in respect to the mineral segregations in Oklahoma, and all three of those implicated at that time resigned under fire, without going to trial.

Mr. COOPER. Mr. Chairman, I would like to ask the chairman of the committee if the information contained in this report ought not to be in the possession of the committee and the House before we legislate on this bill?

Mr. STEPHENS of Texas. I will state to the gentleman that this bill carries only matters of appropriations, and any legislation could not be carried in the bill.

Mr. COOPER. Would it not affect the amount of the appropriations for the purposes for which the appropriations are to be made if we knew the facts?

Mr. STEPHENS of Texas. There is no item carried for the Southern Utes, according to my recollection, in the bill.

Mr. COOPER. The gentleman from Kansas [Mr. MURDOCK] just said that this report covers all the reservations in the country.

Mr. MURDOCK. My understanding is that Special Agent Linnen's report is a report covering generally the reservations in the United States, not merely the single instance of the Southern Utes in Utah.

Mr. STEPHENS of Texas. He is a general inspector, and he goes anywhere that he is sent. He is subject to the orders of the department.

Mr. COOPER. If that is so, ought not we to have the information before we make the appropriation?

Mr. STEPHENS of Texas. No. We could not make an appropriation founded on anything in this report, as I understand it.

Mr. COOPER. But if the gentleman has not seen the report and knows nothing about it, and it relates to all reservations, the gentleman can not say what it contains.

Mr. STEPHENS of Texas. This one Southern Ute Reservation is all I know of specifically.

Mr. COOPER. I have had people speak to me privately, saying things have been unearthed, but this particular report to which the gentleman from Kansas refers I never heard mentioned.

Mr. CARTER. Mr. Chairman, I just want to state to the gentleman that any item in this bill for the immediate taking care of those people would be subject to a point of order, because, as the gentleman from Wisconsin well knows, this bill carries only items for the next fiscal year, and that would more properly come in a deficiency bill.

Mr. COOPER. But if these appropriations are to continue in office certain people—I do not know whether that is true or not—who may be justly attacked in this report of Mr. Linnen's, we would not make the appropriation continuing them in office. That is the point I am making. If there are accusations of fraud bearing upon the officers now doing this work, then we are continuing to appropriate for the very people whom this special agent criticizes.

Mr. STEPHENS of Texas. I will say to the gentleman that this provision of the bill was made up from proper estimates by the department. They have furnished us no estimate relative to that matter, and I would say further that the trouble seems to be that they have a dishonest agent, who is in collusion with a trader. We have to pay some agent, and if this man were removed he would have a successor. He is not specifically named in the bill, but we appropriate so much money for so many employees at each agency.

Mr. COOPER. If that particular gentleman's integrity was attacked in this matter, they could apply a condition to the appropriation when some other man was appointed not to draw this man's salary.

Mr. MILLER. We must know it officially.

Mr. COOPER. We would know it officially if we had that report and it was here, as it ought to be.

Mr. STEPHENS of Texas. We could not have it here when this bill was under consideration. It may be that when the bill is before the other body it will be unearthed.

Mr. COOPER. I do not know why we could not delay appropriating for two or three days until we get that report. I would like to ask the gentleman from Kansas [Mr. MURDOCK] who it was that telegram related to?

Mr. MURDOCK. Mr. Moorehead, of Andover, Mass., who is interested in some way as a citizen in the protection of the Indians.

Mr. MILLER. He is one of the commissioners of the Indian Rights Association. We have an appropriation to pay their expenses in Minnesota.

Mr. MURDOCK. And I would like to ask the gentleman from Minnesota [Mr. MILLER] does he know how long Special Agent Linnen has been engaged in this matter of investigation?

The CHAIRMAN. The time of the gentleman has expired.

Mr. MILLER. Mr. Chairman, I ask unanimous consent for five minutes more.

Mr. STEPHENS of Texas. Mr. Chairman, we can not try all of these things before the committee. Therefore I will object.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

For continuing the construction of lateral distributing systems to irrigate the allotted lands of the Uncompahgre, Uintah, and White River Utes, in Utah, and to maintain existing irrigation systems, authorized under the act of June 21, 1906, to be expended under the terms thereof and reimbursable as therein provided, $50,000.

Mr. SIMS. Mr. Chairman, I only rise to ask unanimous consent to extend my remarks in the RECORD by printing an address by Emory R. Johnson, special commissioner on traffic and tolls, before the Western Society of Engineers, Chicago, January 8, 1913, on the subject of "Unwisdom of toll exemption for coastwise shipping."

The CHAIRMAN. The gentleman from Tennessee [Mr. SIMS] submits a request for unanimous consent to have the address indicated by him printed in the RECORD. Is there objection. [After a pause.] The Chair hears none.

The address is as follows:

The provision of the Panama Canal act exempting American coastwise shipping from the payment of tolls raises two questions: Our rights under the treaty of 1901 with Great Britain to adopt such a policy, and the economic wisdom or unwisdom of such a policy irrespective of the provisions of the Hay-Pauncefote treaty.

Two views are held as to the meaning of the treaty. One view is that the treaty means what it seems to say, i. e., that the principle of the neutralization of the canal as broadly established by Article VIII of the Clayton-Bulwer treaty of 1850 has been incorporated without impairment in the treaty of 1901 and that we have promised to treat our ships using the canal the same as we treat British ships. The other view is that the Hay-Pauncefote treaty merely requires the United States to accord equal treatment to the vessels of all other nations.

I do not wish to discuss the possible meanings that may be given to the phraseology used in the Hay-Pauncefote treaty. I am, however, especially pleased by the stand taken by President Taft that the meaning of the treaty is a question to be arbitrated. Indeed, it seems certain that we must eventually either repeal the toll-exemption clause of the canal act of August 24, 1912, or arbitrate the question of the exemption of American ships from the payment of Panama tolls.

If the law stands as it is and tolls are collected on ships under the British flag and not on ships under our flag, Great Britain will doubtless insist upon damages, and if the demand is ignored by the United States, Great Britain may be expected to seek to cause our shipping or commerce to suffer by the amount of the damages she claims. Retaliatory measures on the part of Great Britain would certainly cause us to seek a settlement of the questions at issue. Of course, the settlement would be by arbitration, because it is inconceivable that Great Britain and the United States should be drawn into war over a difference of interpretation of the meaning of a treaty affecting the treatment of shipping.

As between arbitration of the question of the exemption of American coastwise shipping from the payment of Panama tolls and the repeal of the toll-exemption clause of the canal act, the latter course is the wiser one to pursue. If we arbitrate and lose, we must return all the tolls that have been collected, and henceforth either charge no tolls or collect the same tolls on all vessels using the canal. If we arbitrate and win, we will but have established our right to pursue an unwise policy, a policy that is indefensible, whatever may be our rights under the Hay-Pauncefote treaty.

The policy of the United States with reference to the exemption of American coastwise ships from the payment of Panama tolls ought not to be decided with reference to the rights of the United States under the treaty. The questions to be considered are:

Do the coastwise carriers need to be given a subsidy of nearly $20,000,000 during the next 10 years?

Will the general public, shippers and consumers, be benefited by this subsidy, i. e., will freight rates by coastwise lines or by rail lines be lower?

Is this the best method of using public funds to aid the merchant marine?

Are tolls upon all ships needed to make the canal self-supporting and not a burden upon the general taxpayers?

1. It must be evident to every impartial student of the question that it is not necessary to relieve coastwise shipping of canal tolls as long as foreign-built ships are not allowed to engage in the domestic commerce of the United States. American shipowners have a monopoly of the coastwise trade. In 1911 there were 3,537,750 tons of American ships enrolled for the domestic trade on the Atlantic-Gulf and Pacific seaboards. The increase during the preceding decade had been 38 per cent. There is thus a relatively large and healthily increasing tonnage of coastwise shipping, and the opening of the Panama Canal will undoubtedly bring about a large addition to the coastwise fleet. Our coastwise marine is now given sufficient aid and protection by our navigation laws.

2. The sentiment in Congress and elsewhere in favor of relieving the coastwise shipping from the payment of Panama tolls seems to be due largely to the belief that if tolls are collected from the steamship lines the freight rates which they charge and the rates of the transcontinental railroads will be higher by the amount of the tolls, and the public will thus pay more in added freight rates than it will gain in tolls received. This argument, however, assumes an improbable adjust-

ment of rail and water rates. The rates of the steamship lines and the railroads will not be higher if Panama tolls are collected from the coastwise lines.

Those who contend that the traffic carried by rail between the eastern and western parts of the United States will be charged rates increased by the rate of canal tolls assume that the rail charges must be and will be controlled by the coast-to-coast water rates and that the schedules of railroad rates will be fixed at such differentials above the water rates as the railroads can charge and secure traffic in competition with the rival water lines. In order to bring about this adjustment of rail and water rates there must be, first, active rate-controlling competition among the water lines, and, second, it must be the policy of the railroads to fix rates so as to compete actively with the carriers by water for practically all traffic moving between the two seaboards. Will these conditions exist?

It is the practice of steamship lines when operating between common termini to adjust services and rates by "conferences." The informal organizations or conferences of steamship companies are able to regulate competition and to prevent rates from being forced by competition to the level below which they could not be forced without making the business unprofitable. When several steamship lines operate over established routes and serve the same sections they are able by agreements and understandings with each other so to limit competition as to make their services and rates at least partially monopolistic. Unless prevented by effective Government regulation steamship companies will, like railroad companies, steadily increase the monopolistic character of their service.

If this analysis of the relation of steamship companies with each other be correct, it follows that the rates charged by steamship lines between the two seaboards of the United States will be, or will tend to be, not the lowest rates at which traffic can be profitably handled, but rates as high as the interested steamship lines think the rates can be put without limiting the growth of traffic or without losing tonnage to the railroad lines. Steamship companies, like railroad companies, will tend to charge what the traffic will bear; and steamship traffic will bear such rates as shippers will pay to have their goods transported by water instead of by rail. If this be true, the tendency will be for carriers by water to adjust their charges with reference to the schedules of railroad rates. In so far as this practice of rate making prevails, it will be impossible for the carriers by water to add the canal tolls to their rates. Whether there be canal tolls or not, rates by water carriers will be such as the traffic will bear; the upper limit of what traffic by water will bear will be the lower limit to which rates are brought by the railroad; and the tolls will be paid by the owners of the steamship lines instead of by the shippers in additional water rates.

In the case of chartered vessels, however, the shipper, not the owner of the vessels, must bear the burden of the canal tolls. Charter rates will necessarily be increased by the amount of the canal tolls; and, in so far as railroads compete with the chartered vessel for lumber and similar traffic, the canal tolls will be of advantage to railroads. This advantage, however, will be more theoretical than real. It is not probable that the railroads can in any event compete with the carrier by water for bulk cargoes of lumber, coal, and similar products. The railroads will be obliged to allow that traffic to move by water. They will not run the risk of depressing their general schedule of commodity and class rates for the purpose of preventing chartered vessels from securing traffic that can be handled between the two seaboards of the United States for $5 per ton.

It will be the policy of the railroads to allow a portion of the traffic that might be held to the rails to be shipped coastwise through the canal and to maintain rates upon the traffic which can readily be prevented from taking the canal route. It is probable that the railroads will adopt the general policy of surrendering without serious struggle the minor portion of their traffic in order to maintain profitable charges upon the major share of their tonnage.

The effect of canal tolls upon rail and water rates and the adjustment of the charges of coastwise and all-rail carriers handling traffic between the two seaboards of the United States may be summarized as follows:

Producers and consumers would not secure the major share of the benefits resulting from the remission of tolls upon coastwise shipping using the Panama Canal. On the traffic handled by steamship lines between the two seaboards rates will be but slightly affected by canal tolls. The coastwise traffic between our Atlantic and Pacific ports will consist mainly of general commodities and package freight handled by the established steamship lines. The rates charged by the steamship lines being regulated by agreements among competing companies and being fixed with reference to what the traffic will bear, will presumably be as high as traffic conditions warrant, regardless of tolls. The several lines will have uniform and relatively stable schedules of charges, and the rates of the steamship lines will ordinarily be adjusted with reference to the stable schedule of commodity and class rates prevailing upon the transcontinental railroads and their rail connections. If canal tolls are charged, the operating expenses of the steamship companies will be increased by the amount of the tolls, and their net profits will be lessened by the same amount.

Charter traffic between the two seaboards of the United States will be limited to a few commodities handled as bulk cargoes by or for the exceptionally large shipper. Chartered vessels will not compete with the regular steamship lines to such an extent nor in such a manner as generally to regulate the rates charged by the steamship lines on the greater portion of their traffic.

3. The exemption of American coastwise shipping from the payment of Panama tolls is a poor kind of subsidy to our merchant marine. The money will go to our shipping that needs no aid and not to our vessels that require assistance. If the United States is to adopt a ship-subsidy policy, and I personally would not oppose it, the public funds should go where needed, and should be granted in such a manner as to be effective in building up our merchant marine engaged in the foreign trade in competition with ships under the flags of other countries. The experience of Japan, Germany, and even of Great Britain, shows that the only effective ship subsidies are those paid to strong lines operated over routes deemed important to the government granting the subsidy. To aid our merchant marine in such a way as to produce results, strong lines must be selected or created and given such support as they require to enable them to compete successfully with foreign steamship companies and grow stronger year by year; the Government must concentrate its aid and strengthen the strong lines assisted. It has been suggested that it would be wise for the United States to pay back the Panama tolls collected from the owners of American ships engaged in our foreign trade through the Panama Canal. Such a subsidy, however, would be so small and so thinly distributed as to be ineffective; moreover, the repayment to shipowners of the Panama tolls collected from them would invite similar action by other nations to overcome the effect of our action. Such a subsidy would be one suggesting retaliatory action.

4. Are tolls from all vessels using the Panama Canal necessary to make the canal commercially self-supporting, to prevent it from adding one more permanent load to the increasing burdens of the general taxpayers?

The annual revenue ultimately required to make the canal commercially self-supporting would be about $19,250,000. It is estimated that the operating and maintenance expenses will amount to $3,500,000 yearly, and that $500,000 will be required for sanitation and for the government of the zone. The interest on the cost of the canal—$375,000,000—at 3 per cent per annum, will amount to $11,250,000, and the treaty with Panama guarantees an annuity, beginning 1913, of $250,000 to the Republic of Panama. The sum of these four items is $15,500,000. If to this there be added 1 per cent per annum on $375,000,000 to accumulate a fund to amortize the investment, the total annual expenses will be $19,250,000.

The shipping using the Panama Canal during the early years of its operation will probably have an aggregate net tonnage of about 10,500,000 tons. At the beginning of the operation of the canal coastwise American shipping will probably amount to 1,000,000 net tons of this traffic. By the end of the first decade, i. e., 1925, it is probable that the total net tonnage of shipping passing through the canal will amount to about 17,000,000 tons, of which at least 2,000,000 net tons will probably be contributed by our coastwise shipping.

The tolls upon merchant vessels have been fixed by the President at $1.20 per net ton. It is thus possible that the revenues derived from the canal during the early years of its operation might average about $12,600,000 per annum, if all vessels, American and foreign, were to pay tolls. If the coastwise shipping is exempted from tolls the initial receipts from the canal will amount to less than $11,500,000 during the early years of operation. By 1925 the total traffic of 17,000,000 net tons might, if the rate of tolls were maintained at $1.20 per ton, yield a possible revenue of $20,400,000 if all ships, American and foreign, were required to pay the canal levies. In all probability, however, the rate of tolls will have been reduced to $1 per net ton by 1925, thus reducing the possible aggregate revenue to $17,000,000. The coastwise shipping of the United States in 1925 will doubtless contribute at least 2,000,000 of the probable 17,000,000 net tons of aggregate traffic. Thus, if the coastwise shipping does not pay tolls in 1925, and the rate of tolls is $1 per net ton, the probable revenue of the Panama Canal will then be $15,000,000 a year, or somewhat less than the estimated annual outlays for operation, zone sanitation, government, the Panama annuity, and the interest on the amount invested in the canal.

The United States Government should adhere to business principles in the management of the Panama Canal. While tolls levied at Panama should be low enough to permit commerce to derive substantial benefits from the canal, and while the charges for the use of the waterway should be well within what the traffic will bear, business prudence and political wisdom demand that the canal shall be commercially self-supporting providing revenues, large enough to enable the canal to carry itself, can be secured without unwisely restricting traffic. The tolls of $1.20 per net ton, as established by the President, will not unduly restrict the use of the canal, even by shipping least benefited by the waterway. Coastwise carriers between the two seaboards of the United States will derive the maximum benefit from the canal, and a rate at least three times the one established might be paid by coastwise carriers without restricting their use of the waterway.

The canal will cost the United States Government $375,000,000, much of which has been, or will be, secured by borrowing funds. The interest and principal of this debt must be paid either from funds secured by general taxes or from the revenues derived from canal tolls. Public expenditures are increasing rapidly. Funds are required in increasing amount for the promotion of the public health, for irrigation and reclamation, and for maintaining the military powers and naval prestige of the United States. Large expenditures upon rivers and harbors are urgently needed. Taxes must inevitably increase. The demands upon the United States are certain to be much greater in the future than they have been in the past, and it does not seem wise for the Federal Government to construct and maintain at the expense of the general budget such a costly public work as the Panama Canal. Those who derive immediate benefit from the use of the Panama Canal may properly return to the Government a portion of the profits secured from using the canal, provided this policy can be followed out without burdening commerce. It should be the policy of the United States to apply business principles to the management of the Panama Canal and to prevent its being a continuing burden upon the General Treasury and upon the taxpayers of the United States.

The Clerk read as follows:

For continuing the construction of lateral distributing systems to irrigate the allotted lands of the Uncompahgre, Uintah, and White River Utes, in Utah, and to maintain existing irrigation systems, authorized under the act of June 21, 1906, to be expended under the terms thereof and reimbursable as therein provided, $50,000.

Mr. MURDOCK. Mr. Chairman, I move to strike out the last word, and I do so for the purpose of asking the gentleman from Minnesota [Mr. MILLER] if he can tell us over what period of time Mr. Linnen, a special agent in the Interior Department, has investigated the conditions on various Indian reservations in the United States, what reports he has made, and what hope there is of any conclusion of this matter?

Mr. MILLER. I can only answer the gentleman in a general way, because my information is only general. I will say that Mr. Linnen is only an ordinary inspector in the Indian Bureau, and as such he travels where he is sent to make investigation and report. I know he has made some rather extended investigations in various places at different times, extending over several years, and, as with other inspectors, as is always the case, he makes his report in detail covering the subject he is sent to investigate. It has never been the custom to have those printed or to send them to Congress. They are in the nature, more or less, of the routine part of the work of the department. Prof. Moorehead, I am sure, has in mind something that Mr. Linnen may have said in some of his recent reports.

Mr. MURDOCK. How recent?

Mr. MILLER. There is no general investigation which he has made or no general report. He has made some special reports covering special investigations, the same as other inspectors have made, and he has made some, no doubt, recently. I presume he is making them monthly, or if he has a detail covering more than a month, he makes them bimonthly. These investigations are not general investigations of the Indian question. These reports are always available. Several of them have been published as documents from time to time as called for. If somebody calls for these they will be published as a document. Any Member who would go to the office of the Secretary of the Interior could get a copy of them.

Mr. MURDOCK. The gentleman does not believe for a minute that Prof. Moorehead is right in his conclusions that the conditions that exist in the reservations in the United States could only be equaled in India or Russia for distress?

Mr. MILLER. Prof. Moorehead is a very high-minded man. He is holding his position simply because of a desire to perform a good public service. I must confess, after some reasonable investigation, that some of his knowledge must be from hearsay and is not always correct. I know he means what he says, but I can not always accept his conclusions, because I do not feel that they are true.

I have investigated several Indian reservations in the last four or five years, and I would not hesitate to say that the condition of the Indians in this country at large is vastly superior to what it ever was before, but that does not conclude that in several places there has been great wrong, and in many instances there has been great fraud, and that eternal vigilance is the price of success in the handling of the Indian question all along the line. And it is to the advantage of the whole situation that men like Prof. Moorehead keep raking it up.

Mr. MURDOCK. Then does not the gentleman think that we ought to have all the information of the Linnen reports?

Mr. MILLER. Yes, sir. It has never been the practice in the department to publish them.

Mr. HAYDEN. I will say that in one case I was asked to have the commissioner give me a report of Mr. Linnen. I called at the office. The Secretary said that the information contained in the report was to be used before a grand jury in Arizona, and therefore could not be published at that time. Mr. Linnen was sent to Arizona and the agent was indicted, and Mr. Linnen's testimony was used before the grand jury before anybody else saw it.

Mr. WILLIS. I want to suggest to the gentleman from Kansas that I know something about Prof. Warren K. Moorehead, who has been brought into this discussion. I have known him personally for 20 years. I regard him as one of the greatest living authorities on the American Indian. What he knows about the Indian he does not base on what he has read in books. He has studied these subjects personally and at first hand. He has written a number of books on the Indian that are not theoretical, but practical, and are entirely reliable. In my judgment what he says about the Indians should carry a great deal of weight.

Mr. MURDOCK. In view of that statement, then, I want to say to the gentleman from Ohio that this is rather a severe indictment.

Mr. WILLIS. It is, if Prof. Moorehead really said what the newspapers quoted him as saying.

The CHAIRMAN. The time of the gentleman has expired.

Mr. HOWELL. Mr. Chairman, I move to strike out the last word.

Mr. STEPHENS of Texas. Mr. Chairman, what is pending before the House?

The CHAIRMAN. The gentleman from Utah [Mr. HOWELL] is recognized.

Mr. STEPHENS of Texas. Mr. Chairman, I ask unanimous consent that debate on this paragraph close in five minutes.

Mr. HOWELL. I would like to have one minute.

The CHAIRMAN. Is there objection to the gentleman's request?

There was no objection.

The CHAIRMAN. The gentleman from Utah is recognized for one minute.

Mr. HOWELL. Mr. Chairman, in the interest of justice to the officials of the Uintah Indian Reservation I wish to correct some misinformation that has been given on the floor of the House recently. The Uintah Indian Reservation in Utah, to which reference has been made, has not been examined by Special Agent Linnen. It has been examined by an agent of the department, and while there have been some suggestions made with reference to the administration of the reservation, there was no criticism made whatever as to the handling of the funds of the Indians. The officers in charge were found to be absolutely clear from any taint or semblance of corruption in the discharge of the important trusts which have been imposed upon them.

The Southern Ute Reservation, which was designated as being located in Utah, is in Colorado, and I felt like making the record straight, so that the officers of the Uintah Indian Reservation might not rest under the imputation of having been found guilty of corruption.

Mr. STEPHENS of Texas. Mr. Chairman, I ask that the Clerk read.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

For support and education of 300 Indian pupils at the Cushman Indian School, Tacoma, Wash., including repairs and improvements, and for pay of superintendent, $50,000, said appropriation being made to supplement the Puyallup school funds used for said school.

Mr. LA FOLLETTE. Mr. Chairman, I wish to offer an amendment to page 30, after line 6.

The CHAIRMAN. The Clerk will report the amendment offered by the gentleman from Washington [Mr. LA FOLLETTE].

The Clerk read as follows:

Amend, on page 30, after line 6, by adding the following:

"For support and civilization of the Kalispel Indians in the county of Pend Oreille, in the State of Washington, to erect a school building, employees' quarters, and other necessary buildings, and providing the same with equipment, in the purchase of stock, implements, seeds, and other articles necessary to promote the general welfare of said Indians, including the employment of teachers and instructors, under the jurisdiction of the Spokane Indian School, Spokane, Wash., with the approval of the Secretary of the Interior, $10,000.

"That the Secretary of the Interior is hereby authorized and directed to make allotments, under the general allotment act, to the Kalispel Indians in the county of Pend Oreille, in the State of Washington, of the following-described lands, which they are now occupying, to wit:

"Township 34 N., range 44 E.: Section 20, S. ½ of SE. ¼ and S. ½ of SW. ¼; section 29, all except the SE. ¼ of SE. ¼; section 30, lots 1, 6, 7, and 12; section 31, lots 1, 6, 7, and 12; section 32, NW. ¼ of NE. ¼, N. ½ or NW. ¼, SW. ¼ of NW. ¼, and W. ½ of SW. ¼.

"Township 33 N., range 44 E.: Section 5, lots 4, 5, and 6, SW. ¼ of NW. ¼, and E. ½ of SW. ¼; section 6, lots 1, 6, and 7; section 8, lots 1, 2, 3, and 4; E. ½ of NW. ¼, E. ½ of SW. ¼, SE. ¼ of NE. ¼, W. ½ of SE. ¼, and SE. ¼ of SE. ¼; section 17, all; section 18, lots 1, 6, 7, and 12; section 19, lots 1, 2, 3, 4, 5, 6, 7, 8, 9, and 12; section 20, all except E. ½ of SE. ¼; section 29, all; section 30, lots 1, 6, and 7; section 32, lots 1, 2, 4, 5, 6, and 7, N. ½ of NE. ¼, and SE. ¼ of NE. ¼; section 33, S. ½ of NW. ¼, N. ½ of SW. ¼, SE. ¼ of SW. ¼, and lot 1.

"Total area, 4,449.27 acres."

Mr. STEPHENS of Texas. Mr. Chairman, I make a point of order against the amendment.

Mr. LA FOLLETTE. Will the gentleman withhold his point of order for two minutes?

Mr. STEPHENS of Texas. Yes; I will yield to the gentleman two minutes.

The CHAIRMAN. The gentleman from Washington [Mr. LA FOLLETTE] is recognized for two minutes.

Mr. LA FOLLETTE. Mr. Chairman, this amendment which I have offered is an amendment which I offered to the bill on a previous occasion. It is to provide for a band of 100 Indians in my district in the State of Washington. Some 25 years ago the Government moved the tribe from their abiding place, and this little band, like the Seminole Indians in Florida, refused to leave their hunting grounds or homes, and the Government set aside the prescribed tract of land I have set forth in the amendment for them to reside on. They have lived there for 25 years without any allotments and without any assistance received from the Government in any shape, form, or manner. The country thereabouts has been settled up, and the game has been driven out, and those people are in destitute circumstances. I think it is only an act of justice that they should be provided for.

The Government set aside this land for them 25 years ago, but it was never allotted to them. They have never had any schools or anything else done for them, and they are surely as much the wards of the Government as are the Seminoles or any of the Indians in Oklahoma.

Mr. STEPHENS of Texas. Mr. Chairman, I sympathize with the gentleman, and I suggest that the best way for him to proceed is to go to the department and get the department to use for the purpose he has in mind part of the lump-sum appropriation that we make for that purpose.

Mr. LA FOLLETTE. They told me at the department that they wished something could be done in this matter, but that they did not have the authority.

Mr. STEPHENS of Texas. Then why does not the gentleman draft a bill and present it to the Committee on Indian Affairs, so that the committee could get a report from the department and the bill could come up in the regular way? It can not come in the appropriation bill at this time. It is new legislation.

The CHAIRMAN. The point of order is sustained. The Clerk will read.

The Clerk read as follows:

For support and education of 250 Indian pupils at the Indian school, Tomah, Wis., and for pay of superintendent, $43,450; for general repairs and improvements, $6,000; in all, $49,450.

Mr. ESCH. Mr. Chairman, I wish to offer an amendment, which I send to the Clerk's desk.

The CHAIRMAN. The Clerk will report the amendment offered by the gentleman from Wisconsin [Mr. ESCH].

The Clerk read as follows:

Amend, page 30, by inserting after the figures "$6,000," in line 15, the following: "For improvement of boiler house and installation of central heating plant, including boilers, $8,000."

Mr. STEPHENS of Texas. Mr. Chairman, I make the point of order against the amendment. It is clearly new legislation. It provides for a new boiler and fire house.

Mr. ESCH. Mr. Chairman, this is an improvement in the existing plant, and evidently it can not be subject to the point of order made by the chairman of the Committee on Indian Affairs. The present occupant of the chair has declared in a ruling this afternoon that where the Government has established a policy it would be lawful to enact legislation to carry out such a policy.

The Government has established an Indian school at this place. The heating plant is but an incident thereto, and hence an improvement in such heating plant would not be subject to the objection made by the gentleman as new legislation.

Mr. STEPHENS of Texas. I think the gentleman is wholly in error. This term "general repairs and improvements" has been held to mean repairs and improvements on buildings used, or upon the water plant or something of that kind attached to the school, for school purposes. The term "general repairs and improvements" is well known, and does not contemplate erecting any new buildings or anything of the kind, and it would be subject to a point of order.

Mr. ESCH. A heating plant would be exactly in line with what the gentleman has just stated.

Mr. STEPHENS of Texas. Then if it is, they would not need this, because it would come under the head of general repairs and improvements, and this $7,000 could be used for the purpose of putting it in.

Mr. ESCH. You cut it down over a thousand dollars below what it was last year. It is very necessary.

Mr. STEPHENS of Texas. It is evidently subject to the point of order. The heating plant is not mentioned in the bill, and it could not possibly be construed to cover the heating plant. If it could, it could cover the school building or anything else.

Mr. ESCH. There is a heating plant there now. This is an improvement thereof.

The CHAIRMAN. Has the gentleman the act upon which this item in the bill was based?

Mr. ESCH. I have not the act at hand. I suppose it would hark back to the organic law providing for this school.

The CHAIRMAN. Has the gentleman that act?

Mr. ESCH. I have not.

The CHAIRMAN. Can the gentleman get it? We can pass this for the time being?

Mr. ESCH. I will try to get the authority. I ask that the item may be passed for the present.

The CHAIRMAN. The Clerk will then continue the reading of the bill.

The Clerk read as follows:

SEC. 25. For support and civilization of Shoshone Indians in Wyoming, including pay of employees, $12,000.

Mr. MONDELL. Mr. Chairman, I move to strike out the last word. The department estimated $15,000 for this purpose this year. The additional $3,000 was partly intended to cover contemplated increases in the salaries of some of the officials. Inasmuch as the committee has taken the position that it will not agree to any increases whatever in salaries, it is hardly worth while for me to offer an amendment, as the committee would not agree to it and it could not be adopted. Therefore I shall offer no amendment at this point, but express the hope that the committee will be a little more liberal in this matter in the future. I withdraw the pro forma amendment.

The CHAIRMAN. The pro forma amendment is withdrawn. The Clerk will read.

The Clerk read as follows:

For support and education of 175 Indian pupils at the Indian school, Shoshone Reservation, Wyo., and for pay of superintendent, $31,025; for general repairs and improvements, $4,000; in all, $35,025.

Mr. MONDELL. Mr. Chairman, I offer the amendment which I send to the Clerk's desk.

The Clerk read as follows:

In lines 2 and 3, page 31, strike out "$4,000; in all, $35,025," and insert in lieu thereof "$6,000; in all, $37,025."

Mr. FERRIS. I reserve a point of order on that amendment.

Mr. MONDELL. The item is not subject to a point of order.

Mr. FERRIS. I am not sure about that.

Mr. MONDELL. Mr. Chairman, I hope the committee will accept this amendment. It increases this item $2,000. The estimate of the department was $6,000 above what the committee has allowed. The entire sum should have been allowed, because it is greatly needed for slight increases in a few salaries, but more particularly for the improvements of the dairy barn. Gentlemen are aware that while this school is on a reservation, it is specifically appropriated for, and therefore none of the sums in the general appropriation can be used for repairs. Therefore this school and the farm adjacent must be cared for and the improvements made entirely out of these items. Among the other buildings in connection with the school is a dairy barn which is in a very bad condition. It should be rebuilt. The department estimates that $4,000 is needed for this work, but I am only asking the committee to give us $2,000, in the hope that with the increase of $2,000 they may repair or partly rebuild the dairy barn so that it will be possible to continue to use it. On page 141 of the hearings this language is used by the commissioner:

This will leave a balance of about $4,000 for use in constructing a new dairy barn at the school, which is badly needed, as the one now in use is in a dilapidated condition, tumbling in and not worth repairing, and wholly unfit to keep stock in.

As a matter of fact, what is contemplated is really to rebuild the dairy barn, and $4,000 is needed for that purpose; but if the committee will add $2,000 to the appropriation I hope that they may be able to make that improvement. Without it the building is likely to be in condition where it can not be used at all. I should ask for more for this purpose. I should ask for an increase in the salary of the superintendent, and for other officials, if I believed there was any hope of securing it, but as I know all such increases would be opposed and defeated I am only asking what I feel is absolutely essential.

Mr. STEPHENS of Texas. I desire to ask the gentleman whether or not this is a structure of stone, brick, or lumber?

Mr. MONDELL. This building has perhaps a stone foundation, but built, as I recollect, of native lumber, and the new building would, I assume, be built of native lumber, which the Indians would largely get out themselves. The money would be expended to a considerable extent for Indian labor. They would saw the material at their own sawmill, I hope, and get the material from their own reservation.

Mr. STEPHENS of Texas. Would it be necessary to rebuild the barn entirely?

Mr. MONDELL. Very largely, I am inclined to think. Practically it would be necessary to go to the foundation and then come up with a new structure. Possibly there is material in the old barn that they will use, but practically the barn should be rebuilt.

Mr. STEPHENS of Texas. How long has the barn been there?

Mr. MONDELL. I should say 20 years or more.

Mr. STEPHENS of Texas. How many cows and other animals do they have?

Mr. MONDELL. They have a considerable farm, about 1,200 acres, and a herd of cows to furnish milk, cream, and make the butter.

Mr. STEPHENS of Texas. Does the gentleman know the size of the barn?

Mr. MONDELL. No; but it is quite a large barn; they estimate that it would cost $4,000; but with this increase they will have in all $6,000 for all needed repairs, and I am in hopes that out of this $6,000 they can take enough to rebuild the barn and then have a small sum for other repairs. It will not give the amount that they ought to have, but it will help some.

Mr. STEPHENS of Texas. The gentleman from Wyoming has another amendment. Is the gentleman willing to take the additional amount out of the general appropriation?

Mr. MONDELL. Yes.

Mr. STEPHENS of Texas. Mr. Chairman, I have no objection to this amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Wyoming.

The amendment was considered and agreed to.

The Clerk read as follows:

For continuing the work of constructing an irrigation system within the diminished Shoshone or Wind River Reservation, in Wyoming, including the maintenance and operation of completed canals, $50,000, reimbursable in accordance with the provisions of the act of March 3, 1905.

Mr. MONDELL. Mr. Chairman, I offer the amendment which I send to the desk, to be inserted at the end of the paragraph.

The Clerk read as follows:

Page 31, line 9, insert the following as a new paragraph:
"*Provided*, That the Secretary of the Interior is hereby authorized and directed to use not to exceed $1,000 of the sum herein appropriated for the purpose of making an investigation of the conditions of the roads and bridges of the said Wind River Reservation, and shall submit a report thereon, together with maps and plans of said roads, together with an estimated cost of construction of the suitable and necessary roads and bridges on said reservation."

Mr. STEPHENS of Texas. This does not enlarge the appropriation?

Mr. MONDELL. It does not enlarge the appropriation at all. It does not increase the appropriation, but gives the Secretary of the Interior an opportunity to make a needed investigation.

Mr. STEPHENS of Texas. Is the gentleman aware, if he gets this amendment, that it will be subject to a point of order in a succeeding bill—that the appropriation would be subject to a point of order?

Mr. MONDELL. I understand that. The gentleman understands that any appropriation that was made following this report, if the report should justify an appropriation, would, perhaps, be subject to a point of order.

Mr. STEPHENS of Texas. The whole provision is reimbursable?

Mr. MONDELL. It is.

Mr. STEPHENS of Texas. The Indians are requesting that this shall be done?

Mr. MONDELL. I think they desire to have good roads.

Mr. FOSTER. Mr. Chairman, I would like to ask the gentleman is there any money in the Treasury to the credit of these Indians?

Mr. MONDELL. There is not very much at this time, but the Indians have over a million acres of land that by law are subject to sale now and are being sold from time to time. In addition to that they have a reservation which they own in common in addition to their allotment, and a good deal of it is very good land.

Mr. FERRIS. Mr. Chairman, if the gentleman will allow me, the property of these Indians amounts to $2,212,140.68; so I assume that the Government would get its money back.

Mr. MONDELL. I do not think there is any question about that.

The Clerk completed the reading of the bill.

Mr. ESCH. Mr. Chairman, there was an amendment offered by me, on page 30 of this bill, that was passed over. I ask unanimous consent to withdraw the amendment to which the gentleman from Texas made objection and offer in lieu thereof the following which I send to the desk.

The Clerk read as follows:

Amend, line 15, page 30, by striking out the figures $6,000 and inserting in lieu thereof $14,000.

Mr. ESCH. Mr. Chairman, the prime object of asking for an increase in this appropriation is to improve the heating plant at the Tomah Indian School. The heating plant they have there heats only two buildings, and there are a dozen buildings on the grounds. They have separate boilers and separate buildings. The purpose is to connect the several buildings with a central plant, and enlarge the plant in order to meet the new demands. The separate heating plants in the several buildings have been installed many years. The several boilers are in bad condition and can not be put to the highest capacity to get the highest pressure and meet the low temperatures that we have in that climate. The cost of repairs is increasing year by year by reason of the separate heating plants in the separate buildings. It is a matter of great economy to install a separate plant and heat all the buildings, not only an economy as to service, but a great economy in coal consumption. The coal cost last year $7,500 to heat these buildings. Col. Pringle, supervising engineer of the Indian service, declares that with an improved plant there would be a saving of 15 to 20 per cent, which would amount to $1,500 a year. So the cost of this improvement can be saved in five years. No private individual or private corporation would persist in maintaining the heating system that we have there in that school to-day. They would install a central plant to effect the economies that I have suggested. I hope, on the plea of economy, if on no other, the gentlemen will consent to the increase in this item.

Mr. STEPHENS of Texas. Mr. Chairman, I desire to ask the gentleman how old this school is.

Mr. ESCH. Over 20 years.

Mr. STEPHENS of Texas. How many students are there?

Mr. FERRIS. The enrollment is 269 and the attendance 239.

Mr. STEPHENS of Texas. What is the cost per capita?

Mr. ESCH. I think $177.

Mr. STEPHENS of Texas. What is the size of the farm that they have?

Mr. ESCH. Three hundred and forty acres.

Mr. STEPHENS of Texas. What kind of buildings have they?

Mr. ESCH. They are of brick.

Mr. STEPHENS of Texas. Are they of brick throughout?

Mr. ESCH. Yes; except two or three small buildings.

Mr. STEPHENS of Texas. I see they have been making appropriations for general repairs and improvements right along, as they do usually in all of these schools. If these are brick buildings, why is it that they would be needing repairs from year to year if only 20 years old?

Mr. ESCH. In the one item of repairing boilers in these separate buildings I understand the cost one year was almost $1,000. Then they are trying to replace the old pine floors of these schools with hardwood, and have tried to put in cement sidewalks. They have tried to enlarge the dairy barn and to make other improvements. They have also improved the waterworks.

Mr. STEPHENS of Texas. Does the gentleman know what the additional amount estimated was?

Mr. ESCH. Twenty-one thousand dollars by the superintendent, which includes, however, an employees' building.

Mr. STEPHENS of Texas. Does not the gentleman think that $4,000 would be enough for the purpose that he desires?

Mr. ESCH. I am afraid it would not, because of the cost of connecting the central plant with these 12 buildings. We have to lay the pipes 5 feet under ground.

Mr. STEPHENS of Texas. I will be willing to accept an amendment of $4,000.

Mr. ESCH. Will not the gentleman make it $5,000? [Laughter.]

Mr. STEPHENS of Texas. I am willing to make it $4,000.

Mr. ESCH. Then, Mr. Chairman, I will amend my amendment by making it $10,000, being an addition of $4,000, as suggested by the gentleman from Texas.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

Amend, line 15, page 30, by striking out the figures "$6,000" and inserting in lieu thereof the figures "$10,000."

Mr. STEPHENS of Texas. And by changing the totals to correspond.

The CHAIRMAN. The question is on the amendment.

The question was taken and the amendment was agreed to.

Mr. STEPHENS of Texas. Mr. Chairman, I ask unanimous consent now to return to page 10 of the bill, to the item under California.

The CHAIRMAN. It was the understanding that if there was no objection the committee would return to that item.

Mr. STEPHENS of Texas. This item was passed over on last Tuesday in order that the gentleman from California [Mr. RAKER] might have an opportunity to offer an amendment.

Mr. FOSTER. Mr. Chairman, I think the item has not yet been read.

The CHAIRMAN. The Clerk will read the item.

The Clerk read as follows:

CALIFORNIA.

SEC. 3. For support and civilization of Indians in California, including pay of employees, and for the purchase of small tracts of land situated adjacent to lands heretofore purchased, and for improvements on lands for the use and occupancy of Indians in California, $57,000.

Mr. FOSTER. Mr. Chairman, on that I reserve a point of order. I desire to ask the gentleman from California [Mr. RAKER] a question. He seems to have some interest in this matter.

Mr. RAKER. Oh, no interest especially, except as a Representative from California to the end that these unfortunate people be properly cared for.

Mr. FOSTER. How many Indians are there in California?

Mr. RAKER. Something over 20,000.

Mr. FOSTER. And how much land have they?

Mr. RAKER. I am not able to inform the gentleman.

Mr. FOSTER. This is irrigated property?

Mr. RAKER. Oh, no; this is throughout the entire State.

Mr. FOSTER. How long has Congress been appropriating $57,000 to buy little strips of lands around where these Indians are located? Can the gentleman inform us?

Mr. RAKER. No. I can say this, that Congress has never been appropriating $57,000 for this purpose.

Mr. FOSTER. Oh, I think it has for several years.

Mr. RAKER. They have been appropriating big amounts, but not sufficient, of course, for the purpose of education and maintenance of Indians, and, incidentally, for the purchase of some lands.

Mr. FOSTER. Can the gentleman inform the committee how much of this $57,000 is expended for salaries for men looking after this all of the time?

Mr. RAKER. I am unable to state the exact amount.

Mr. FOSTER. Does the gentleman know whether there are men who are employed constantly to pick up those little pieces of land?

Mr. RAKER. Oh, no; I am satisfied of that.

Mr. FOSTER. Is the gentleman sure of that?

Mr. RAKER. Yes; I am satisfied of that.

Mr. FOSTER. My understanding is that there is a certain one who is kept busy there all of the time, employed by the year.

Mr. RAKER. I think that does not apply to the State of California for the purpose of picking up land.

Mr. FOSTER. They are buying this land.

Mr. RAKER. No one, as I understand it, is engaged in that special occupation.

Mr. FOSTER. Who looks after buying this land?

Mr. RAKER. First, it would be the agents or the superintendents of the schools near by where they are looking after the other matters, and if it becomes necessary to obtain some small tracts they would do so.

Mr. FOSTER. They spend $57,000 every year?

Mr. RAKER. Oh, no; this does not cover all. The purpose of the bill is for the support and civilization of the Indians of California. That goes over the entire State.

Mr. FOSTER. And the purchase of land?

Mr. RAKER. And incidentally—and it is so incidental that it amounts to very little—there are occasionally small pieces of land that are obtained adjacent to some particular tract now held by the Government for the use of the school or otherwise, and there have been a few instances where they have purchased a little tract for some Indians.

Mr. FOSTER. Does the gentleman propose to increase this amount?

Mr. RAKER. Yes; as recommended by the department in its estimate and, further, as shown by virtue of correspondence with the department.

Mr. FOSTER. How much does the gentleman propose to increase it?

Mr. RAKER. Three thousand dollars.

Mr. FOSTER. For the purpose of buying land or paying salaries?

Mr. RAKER. For the purpose of absolute necessaries for the care and support of the Indians. There are a number in the State that are unprovided for. Even our counties are assisting all they can, and I am informed by the department that they have used up every cent that they appropriated last year and that there are needy Indians in the State, scattered over the State, that ought to have the care and assistance of the department, and the department is unable to give them that care on account of not having the funds.

Mr. FOSTER. Mr. Chairman, the gentleman's argument is so convincing to me that I am willing to withdraw the point of order. I withdraw the point of order.

Mr. RAKER. I offer the following amendment.

The CHAIRMAN. The gentleman from California offers an amendment, which the Clerk will report.

The Clerk read as follows:

Amend, by striking out the figures "57,000," at the end of line 23, on page 10, and insert in lieu thereof the figures "60,000."

Mr. RAKER. Now, Mr. Chairman——

Mr. STEPHENS of Texas. Is there any specific piece of land that it is designed to purchase?

Mr. RAKER. This does not apply to the land at all, and I hope it will not be used for land, but for the actual necessaries for the maintenance of the old Indians scattered all over California. I have a letter here——

Mr. STEPHENS of Texas. Does that change the language of the law heretofore?

Mr. RAKER. No; this is just the same. I only strike out "fifty-seven thousand" and put in "sixty thousand."

Mr. STEPHENS of Texas. Just changing the totals?

Mr. RAKER. That is all.

Mr. STEPHENS of Texas. Then I withdraw any objection.

Mr. MILLER. Mr. Chairman, if the gentleman has finished, I rise to oppose the amendment. I certainly hope the chairman of our committee will not accede to that amendment. If I understand the purport of it, he is introducing a revolutionary and most remarkable proceeding. Every State has many indigent, poverty-stricken, perhaps suffering, Indians scattered through it. It is because of humanity actuating the respective communities in which they may live that they extend some care to them. If they have some property rights or tribal rights, it is the duty of the Government to look after them somewhat, but never since I have been a member of the committee have we appropriated from the Federal Treasury a dollar for an agent who is going over a State to find some needy Indians and pay it to them. I understood the gentleman to say that he wanted $3,000 to take care of these poor and needy Indians.

Mr. RAKER. Will the gentleman yield there?

Mr. MILLER. Certainly.

Mr. RAKER. There is in this bill provided for the care and support and civilization of Indians in California, $57,000. Now, there have been a number of applications to the department more than furnished last year for these Indians. Last year they were unable to do it, and they are unable to do it this year. They recommended that $60,000 be appropriated. According to their letter to me they say it ought to be $75,000.

Mr. MILLER. Are you speaking of the department's estimate?

Mr. RAKER. I am speaking of the letter of the department.

Mr. MILLER. I am speaking of the department's estimate.

Mr. RAKER. Yes, sir; I have a letter here.

Mr. MILLER. And the letter is from the local officer?

Mr. RAKER. No; it is from the Secretary here, the Assistant Secretary of the Interior, Mr. Adams. He says:

DEPARTMENT OF THE INTERIOR,
Washington, January 2, 1913.

Hon. JOHN E. RAKER,
House of Representatives.

SIR: In response to your letter of December 30, 1912, addressed to the Indian Office, regarding the appropriations for the Fort Bidwell and Greenville Indian schools, I have the honor to advise you that the department has submitted favorable reports, with amendments, on H. R. 26669 and H. R. 26670, introduced by you, providing specific appropriations for the Fort Bidwell and Greenville Indian schools. There are inclosed for your information copies of the reports of the department on these bills.

The department will be glad to see the provisions contained in H. R. 26669 and H. R. 26670, if amended as suggested, incorporated in the Indian appropriation bill and a specific appropriation provided for these schools.

Referring to the appropriation for the support and civilization of Indians in California, your attention is invited to the estimate of the department found on page 401 of the estimates of appropriations, 1914, wherein the department requested $60,000 for this work. The Indian bill, H. R. 26874, as reported by the House Committee on Indian Affairs, carries an appropriation of only $57,000 for this work. While there is need for $75,000 for the support and civilization of Indians in California, the department would be satisfied if its estimate for this work, amounting to $60,000, were provided for in the Indian appropriation bill.

Referring to the Indian school at Riverside, Cal., you are advised that the department's estimate for this school is as follows:

"For support and education of 550 Indian pupils at the Sherman Institute, Riverside, Cal., for pay of superintendent, and for general repairs and improvements, $105,000; new buildings, $20,000; central heating plant, $15,000; in all, $140,000."

The Indian bill as reported to the House carries an appropriation of only $104,350 for the Riverside school. The Riverside plant, by the use of the sleeping porches which have been added to a number of the dormitories, has a capacity of about 700. In view of the fact that this school can now accommodate about 700 pupils, it would be in the interest of economy in the expenditure of public funds to authorize the enrollment of 700 pupils, provided Congress would appropriate for the support of this number.

The increase in the enrollment at this school from 550 to 700 would require an additional appropriation over the estimate submitted by the department of $25,050, this amount being determined on the basis of $167 per pupil.

A new building for employees' quarters is one of the urgent needs of the Riverside School. In this connection your attention is invited to the letter of the department of even date in answer to your letter of December 23, 1912, with which you inclosed a copy of a letter from the Chamber of Commerce of Riverside, Cal., regarding the Riverside Indian School.

Referring to your inquiry regarding the needs of the Indians of the Klamath River Indian Reservation, your attention is invited to the report of the department dated December 21, 1911, transmitting a draft of legislation which has been introduced as H. R. 16683, which, if enacted, would enable the department to use the available funds arising from the sale of the lands of said Indians for their benefit. I should be glad to see enacted at this session of the Congress H. R. 16683.

The department will be pleased to furnish any additional information that you may desire regarding the matters to which you refer in your letter of December 30, 1912.

Respectfully,
SAMUEL ADAMS,
First Assistant Secretary.

Mr. MILLER. Very well; I am glad to have that information. Still, Mr. Chairman, it does not alter the situation from my own viewpoint. In the first place, to my mind, this is an exceedingly dubious paragraph. I always have thought so, and that it was subject to a point of order. It contains several things which, if it were a new proposition, I never would give my consent to. For instance, it authorizes the purchase of small tracts of land situated adjacent to land heretofore purchased. What tracts of land, by whom purchased, and what for?

The CHAIRMAN. The time of the gentleman from Minnesota [Mr. MILLER] has expired.

Mr. MILLER. Mr. Chairman, inasmuch as most of my time was occupied by other gentlemen, I ask an extension of five minutes.

The CHAIRMAN. Is there objection?

There was no objection.

Mr. MILLER. That in itself would be sufficient to defeat the bill if it were an original proposition. A year ago we allowed $57,000. Does not the committee see fit to reappropriate that exact amount? Now, in view of the peculiar and particular character of this appropriation I do not think it wise for the gentleman to ask to increase it, because if he does it may be that the next time it falls by it will not be in at all. I do not believe this kind of an appropriation should ever be started, but, having once been started, Mr. Chairman, I do not think it should ever be extended.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California [Mr. RAKER].

The question was taken, and the amendment was rejected.

Mr. RAKER. Mr. Chairman, I desire to have printed as a part of my remarks a letter from the Acting Secretary of the Interior, and also one from Mr. Abbott, the acting commissioner, dated December 21.

The CHAIRMAN. Is there objection?

There was no objection.

The letter is as follows:

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, December 31, 1912.

Hon. JOHN E. RAKER,
House of Representatives.

SIR: Receipt is hereby acknowledged of your letter of December 18, making inquiry in regard to the status of certain indigent Indians living at Hay Fork, Trinity County, Cal.

In reply, I have the honor to advise you that these Indians are located about 100 miles from the nearest Indian school, Round Valley Indian School, at Covelo, Cal., and the superintendent states that it will take at least two weeks' time and cost approximately $75 for each visit made to these Indians. At times it would be impossible for him to visit them on account of the dangerous streams between the two places.

For administrative purposes, these Indians are considered under the jurisdiction of Mr. Horace G. Wilson, in charge of the nonreservation Indians of Oregon and California, with headquarters at Roseburg, Oreg., about 200 miles from where these Indians live.

The office always stands ready to furnish real emergency relief to Indians in a starving or destitute condition within the territory where the service has facilities for such action and as far as applicable funds are available.

As heretofore set forth in previous correspondence in regard to the matter, it is practically impossible, owing to the limited amount of funds available, for this office to give more than occasional temporary relief to these Indians. With the funds appropriated for the Indians in the State of California it is practically impossible to provide for the needs and industrial advancement of the Indians directly under the jurisdiction of the various superintendents, and at the present time there is no balance of the amount appropriated for the "Support of Indians in California" for the present fiscal year except what is already hypothecated for certain definite purposes.

In the estimate of needs for the Indian Service during the fiscal year 1914 the department estimated that at least $60,000 would be necessary for the Indians in California and $250,000 to provide for the "Relieving of distress and prevention of disease, etc., among Indians," which amounts, as reported from the committee, have been cut to $57,000 and $90,000, respectively.

It will thus be seen that the amounts approved by the committee are considerably less than those estimated as absolutely necessary for the needs of the Indians in your State and to provide for the relief of destitution among Indians in all parts of the country.

Respectfully,

F. H. ABBOTT,
Acting Commissioner.

(See copy of other letter preceding.)

Mr. RAKER. Now, Mr. Chairman, I offer the following amendment.

The CHAIRMAN. The gentleman from California offers an amendment, which the Clerk will report.

The Clerk read as follows:

Amend by adding the following at the end of line 23, on page 10:

"For the support and education of 100 Indian pupils at the Greenville Indian School, Greenville, Cal., and for pay of superintendent, $18,700; for general repairs and improvements, $1,000; for construction of septic tank and sewerage system, $3,000; for an employees' building, to be used for employees' quarters, club, kitchen, dining room, $4,000; for shop building for instructing the boys in blacksmithing and carpentry, $1,200; for school farm for maintaining the school stock and small dairy herd, and for raising fruits, grains, and vegetables, $7,000; for a school and assembly building for general meetings and entertainments, $8,000; for a complete steam-heating plant for school and accessory buildings, $6,000; for a boys' dormitory with a capacity of 75, $5,000; for a steam laundry with a capacity of washing and ironing for 150 persons, $2,600; in all, $56,500."

Mr. STEPHENS of Texas. Mr. Chairman, I make a point of order against the amendment on the ground that it is new legislation.

Mr. RAKER. Will not the gentleman reserve the point of order for a moment?

Mr. STEPHENS of Texas. I desire to state to the gentleman frankly that I think it would be unwise legislation to permit a new school plant to be erected without investigation and full report on the matter. We have had no chance to make that investigation, and hence I make the point of order. If the gentleman desires to make a statement, I will yield him the five minutes.

Mr. RAKER. The school at Greenville has been built for quite a number of years. It is a wooden structure. Both boys and girls use it. The dormitory for the boys is at one end and that for the girls is at the other end. The school needs much improvement in the way of new buildings and general improvements to the premises. I will read what the Secretary of the Interior says in regard to it in his letter under date of January 2, 1913; and by way of remark I may say they estimated in the regular estimates for 1914, on page 401, for this school building as a separate institution. Here is what the Secretary says:

DEPARTMENT OF THE INTERIOR,
Washington, January 2, 1913.

Hon. JOHN H. STEPHENS,
Chairman Committee on Indian Affairs,
House of Representatives.

SIR: The department acknowledges receipt of a letter received from Hon. JOHN E. RAKER, addressed to the Commissioner of Indian Affairs, dated December 5, in which he incloses copies of House bill No. 26670, providing an appropriation for the support and education of Indian pupils at the Greenville Indian School, California, as follows: For support and education, $18,700; repairs and improvements, $1,000; septic tank, $3,000; employees' building, kitchen, dining room, etc., $4,000; shop building, $1,200; purchase school farm, $7,000; school and assembly building, $8,000; complete heating plant, $6,000; boys' dormitory, capacity 75, $5,000; and a steam laundry, capacity 150 persons, $2,600; making a total of $56,500.

He requests that a report be made to the House Committee on Indian Affairs.

There is urgent need for a well-equipped school at Greenville. It is located in a section of California where there are a large number of Indian pupils who have not access to any school. It is estimated that there are over 300 out of school and largely without school facilities of any character. The present capacity of the Greenville School is about 100. It has no shop buildings, employees' quarters, central heating or sewage systems, and the other buildings are inadequate for the purposes for which they are used. The plant should be very substantially improved. This bill provides for the support of 100 pupils for the year 1914, and if it should be approved the new buildings provided for will increase the capacity to 150 pupils.

The item of $5,000 for a dormitory for 75 boys is, however, too small. This should be changed to $15,000, which will make ample provision for the construction of a dormitory with a capacity of 50 or 60 pupils.

This department has heretofore recommended that this school be specifically provided for. In the estimate submitted by this department for the proposed bill, making provisions for the entire Indian Service, it is recommended that $30,000 be given this school—$20,000 for the support of 100 Indian pupils and repairs and improvements and $10,000 for new buildings. This estimate for Greenville, however, was very conservative.

The provisions of the bill proposed by Congressman RAKER are much more liberal and are justified by the needs of the Indian service in this community; and, with the change suggested, I should be glad to see the provisions contained in H. R. 26670 incorporated in the Indian appropriation bill as a specific appropriation for the Greenville Indian School. If that be impracticable, I trust the bill may receive consideration as a separate measure.

Respectfully,

WALTER L. FISHER, *Secretary.*

I also have here a letter under date of November 25, 1912, from the superintendent of the Indian school at Greenville. I want to state—and I think the chairman of the Committee on Indian Affairs will bear me out in the statement—that, while the members of the committee, as I know, want to be fair, and are fair, they have not had an opportunity, except from these reports, to go into the matter, although the school is there. Here is the report from the Secretary of the Interior, and a letter from the Indian Service, and from the superintendent at Greenville Indian School, showing the necessity of this school. Here is what the superintendent says:

DEPARTMENT OF THE INTERIOR,
UNITED STATES INDIAN SERVICE,
GREENVILLE INDIAN SCHOOL,
Greenville, Cal., November 25, 1912.

Hon. JOHN E. RAKER, M. C.,
Washington, D. C.

DEAR SIR: Complying with request contained in your letter of the 16th instant, I take pleasure in submitting herewith itemized estimates of improvements needed at this school, with amount for general support, trusting that same can be included in the bill under special appropriation for this school.

For support and education of 100 Indian pupils at Greenville School, Cal., and for pay of superintendent, $18,700.

For general repairs and improvements, $1,000.

For construction of septic tank and overhauling the sewer system, $3,000. The sewer discharge at present is into an open field and is not sanitary, and complaints are being made by residents in vicinity. This needed improvement should be appropriated for by all means.

An employees' building, to be used for employees' quarters, club kitchen, dining room, etc., $4,000.

A shop building, 30 by 50 feet, for instructing the boys in blacksmithing and carpentry, $1,200.

A school farm for maintaining school stock and a small dairy herd and for raising fruits, grains, and vegetables, $7,000. At present the institution has not an acre of farming or grazing land, and, of course, the boys can not be given training in agricultural pursuits.

A school and assembly building, $8,000. At present there is no place for general meetings, entertainments, etc. All exercises of this kind

must be held in a small classroom, which is entirely inadequate, or in the dining room, which is not at all suited to the purpose.

A complete steam-heating plant, $6,000. At present the buildings are all heated by wood stoves, which method is both unsatisfactory and dangerous.

A boys' dormitory with a capacity of 75, $5,000. The present system of housing both sexes in the same building is extremely unsatisfactory; besides, this additional dormitory is badly needed.

A steam laundry, with a capacity of washing for 150 persons, $2,600.

Of course, it will be understood that when the desired improvements in the way of buildings are completed the capacity of the school will be increased to 150, which number should then be appropriated for.

Trusting this information will suit your purpose and that the whole list may be included in the bill for this school, I am, with best wishes,

Very sincerely, W. S. CAMPBELL,
W.S.C.–W.J.Z. *Supt. & S. D. A.*

Yet I understand, Mr. Chairman, that I will have to submit to the ruling of the Chair.

Mr. STEPHENS of Texas. Mr. Chairman, if the gentleman will permit me, I would like to state——

The CHAIRMAN. Does the gentleman from California yield?

Mr. RAKER. Yes; I yield.

Mr. STEPHENS of Texas. There is now an appropriation sufficient to run this school out of the lump-sum appropriation, and the lump-sum appropriation is $1,400,000. This school has heretofore been supported from the general item for Indian schools support, which takes care of all the Indian schools. This school, however, has become insufficient, and in order to relieve the Fort Bidwell School it should have a specific appropriation. The school is already appropriated for under the lump-sum appropriation, and I do not see any sufficient reason why we should change it from the lump-sum appropriation to a specific appropriation. For that reason I must urge the point of order.

Mr. RAKER. I will have to submit to the point of order. Let the Chair decide.

Mr. STEPHENS of Texas. Mr. Chairman, I submit that the amendment is new legislation.

The CHAIRMAN. The point of order is sustained.

Mr. RAKER. Now, Mr. Chairman, I ask unanimous consent that in connection with this amendment I be permitted to insert a letter of the Secretary of the Interior of date January 2, 1912, and also a letter from the superintendent of the Indian school at Fort Bidwell, showing the necessity of this improvement, and a letter from the Assistant Secretary of date January 3, 1913, covering these general bills.

The CHAIRMAN. The gentleman from California [Mr. RAKER] desires authority to have done the printing indicated. Is there objection?

There was no objection.

Following are the additional letters referred to:

DEPARTMENT OF THE INTERIOR,
Washington, January 2, 1913.

Hon. JOHN H. STEPHENS,
Chairman Committee on Indian Affairs,
House of Representatives.

SIR: The department acknowledges receipt of a letter from Hon. JOHN E. RAKER, addressed to the Commissioner of Indian Affairs, dated December 5, in which he incloses copy of H. R. 26669, providing an appropriation for the support and education of the Indian pupils of the Fort Bidwell Indian School, Fort Bidwell, Cal., and for repairs and improvements, and for other purposes, as follows: Cost of employees, $10,500; for clothing, subsistence, and operating expenses, $7,101; for open-market purchases, $1,000; for transportation of supplies from railroad, $500; for telephone and telegraph expenses, $100; for transportation of pupils to and from school, $500; for cement walks, $3,000; for woven-wire fence, $1,000; for irrigation work, $500; for farming experiments, $300; for new school building, $10,000; for new superintendent's quarters, $2,500; for traveling expenses, $300; for harvesting, thrashing, and grinding, $350; for financial clerk, $600; for automobile for use of school and superintendent, $1,200; for sawmill, planer, and equipment, $3,000; for clearing and grubbing 200 acres, $500; making a total appropriation of $42,951.

Mr. RAKER requests that a report be made to the House Committee on Indian Affairs.

The form of this bill is objectionable because it sets out specifically a large number of items which can be better provided for by including them in the general term "Repairs and improvements," and for administrative reasons it will be an advantage to have them so grouped. One item of $500 for transportation of goods and supplies should be eliminated for the reason that there is a general fund from which all such expenses are paid. This is also true of the item of $500 for the transportation of Indian pupils. The item of $600 for financial clerk may also be eliminated, as this position can be regularly provided for in the salary list. I have the honor to recommend that the entire second paragraph be stricken out and that lines 5, 6, 7, and 8 of the first paragraph be changed to read as follows: "appropriated, for the support and education of 125 Indian pupils at the Fort Bidwell Indian School, Fort Bidwell, Cal., and for repairs and improvements, $25,250; for an automobile, $1,200; for new school building, $10,000; for superintendent's cottage, $2,500; and for a sawmill, $3,000; in all, $41,951."

The Paiutes are very poor and are in great need of assistance. There are approximately 60 children of this tribe that should be accommodated in this school. A large number of advanced children from the Pit River Indians should also be enrolled here, these latter Indians having heretofore enrolled few of their children in nonreservation schools. With children from other bands of Indians located in this section of California, the Fort Bidwell School can be filled to its capacity. The present location of the school is ideal, there being an excellent farm and an abundance of water for all purposes, including irrigation and some water power.

There is a large amount of reservation work for the superintendent, and an automobile is essential to efficient administrative work.

There are 1,400 acres of pine timberland on the reserve, two-thirds of which is ripe and should be manufactured into lumber, not only for the use of the school plant, but for the use of the Indians in building homes upon their allotments. A considerable portion of the school farm should be cleared for agricultural purposes, and this timber should also be manufactured into lumber. For this purpose a sawmill is necessary.

This department has heretofore recommended that this school be specifically provided for. In the estimates submitted by this department for the proposed bill, making provisions for the entire Indian service, it recommended that $20,000 be given for the support and education of 125 Indian pupils and for repairs and improvements at Fort Bidwell. This estimate, however, was very conservative.

The provisions of the bill proposed by Congresman RAKER are much more liberal, and are justified by the needs of the Indian service in this community, and with the changes suggested I should be glad to see the provisions contained in H. R. 26669 incorporated in the Indian appropriation bill as a specific appropriation for the Fort Bidwell Indian School. If that be impracticable, I trust the bill may receive consideration as a separate measure.

Respectfully, SAMUEL ADAMS,
First Assistant Secretary.

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DEPARTMENT OF THE INTERIOR,
UNITED STATES INDIAN SERVICE,
Fort Bidwell, Cal., November 25, 1912.

Hon. JOHN E. RAKER, M. C.,
Washington, D. C.

DEAR MR. RAKER: In furtherance of my letter to you of the 20th instant in answer to your request that I furnish you with complete data relative to the cost of maintenance of this school, and after taking into consideration the cost for the past few years, also the increased attendance this year over former years, I have the honor to submit the following, all of which I know to be conservative:

Cost of employees	$7,660
In addition to above, paid from agency fund	2,160
Annual estimate, clothing, subsistence, and miscellaneous operating expenses	7,101
Open-market purchases, not received on estimate	1,000
Transportation of supplies from railroad	500
Telegraph and telephone expenses	100
Transportation of pupils to and from school (which should be increased to $500)	150
Present cost of upkeep	18,671

The plant is noted for its run-down condition, and, in addition to the above, the following should be made available:

Cement walks (or, if sawmill is allowed, wooden walks; if wood, $1,000 is sufficient)	$3,000
Woven-wire fence	1,000
Irrigation work	500
Farming experiments	300
New school building	10,000
New superintendent's quarters	2,500
Traveling expenses	300
Harvesting, thrashing, and grinding	350
Increase of salaries, as follows:	
Superintendent, $1,400 to $1,800	400
Clerk, from $720 to $1,000	280
Financial clerk	600
Automobile, purchase of same	1,200
Sawmill, planer, etc	3,000
	22,430

Of course, a large part of the last estimate will be only necessary for the first year; after that about $20,000 or $25,000 per year will be ample.

The increase in salaries does not seem exorbitant when we consider that this office is obliged to attend to the school and agency work. The agency work, comprising the allotment of minors, supervising the old Indians, inducing them to start home making on their allotments, determination of heirs by hearings, sale of noncompetent and inherited Indian lands, etc.

I do not mean to take this opportunity to try getting my salary raised, and will be very much pleased if we can get the other things needed, but believe remuneration of self and clerks should be in keeping with services rendered.

P. S.—Hope favorable action will be taken on the request for an automobile for this place.

Yours, very truly, W. A. FULLER, *Superintendent.*

Mr. RAKER. Now, Mr. Chairman, I offer the following amendment.

The CHAIRMAN. The Clerk will report the amendment offered by the gentleman from California [Mr. RAKER].

The Clerk read as follows:

Amend, at the end of line 23, page 10, by inserting the following: "For support and education of 125 Indian pupils at the Fort Bidwell Indian School, Fort Bidwell, Cal., and for repairs and improvements, $25,251; for new school building, $10,000; for superintendent's cottage, $2,500; for a sawmill, $3,000; in all, $40,751."

Mr. STEPHENS of Texas. Mr. Chairman, I make a point of order against that amendment, also.

Mr. RAKER. Mr. Chairman, will the gentleman give me three minutes?

Mr. STEPHENS of Texas. I give three minutes to the gentleman.

The CHAIRMAN. The gentleman from California [Mr. RAKER] is recognized for three minutes.

Mr. RAKER. I want to say, Mr. Chairman, that the same conditions apply to this school as apply to the others. There are 150 pupils there. At this school there are over 1,200 acres

of ripe timber adjoining the school, and that timber requires the construction and erection of a sawmill, to the end that the timber might be used in order that the department might improve the school buildings and at the same time have the lumber and material necessary to build up their allotments, which are scattered over this part of the country. I trust the gentleman from Texas will withdraw his objection.

Mr. TILSON. Mr. Chairman, will the gentleman yield?

The CHAIRMAN. Does the gentleman yield?

Mr. RAKER. Yes; I yield.

Mr. TILSON. Did the gentleman bring all these facts to the attention of the Committee on Indian Affairs?

Mr. RAKER. The gentleman is a member of that committee, is he not.

Mr. TILSON. No; I am not.

Mr. RAKER. I supposed the gentleman was.

This is the condition: The appropriation bill was taken up early in the session. I introduced these bills on the first day, December 4, and, of course, it took a few days for the reports to get back to the committee. When the reports came back to the committee this appropriation bill had been reported, and, of course, the committee did not have an opportunity to consider these bills.

Mr. STEPHENS of Texas. As a matter of fact, we did not have any information in regard to these matters before us. Does not the gentleman think he would do well to introduce a bill in the next Congress, the Sixty-third Congress, that would take care of them?

Mr. RAKER. To be honest with the chairman of the committee, the matter has been so thoroughly investigated by the department that I hope that the House will put them on. I feel satisfied that the interests are so urgent that these amendments should go into the Indian appropriation bill. I think the House ought to let them go in.

They are very meritorious. Personally it makes no difference to me, but I know the condition of these Indians. I have a report here from the doctor who has been over that country, and who says a large percentage of them are dying from tuberculosis and the want of care and proper attention. But in this particular case, here are 1,200 acres of ripe timber within a mile of this school that could be sawed and used and the Government property improved, and at the same time lumber could be had for the purpose of building up the allotments of the Indians all over this country nearby, at the same time saving the Government the expense of buying lumber, wood, and so forth, and at the same time conserve the timber that is now going to waste.

The CHAIRMAN. The time of the gentleman has expired.

Mr. STEPHENS of Texas. Mr. Chairman, I sympathize with the gentleman, but I must insist on my point of order. I do not think his timber will be spoiled by next year.

The CHAIRMAN. Does the gentleman from California desire to be heard on the point of order?

Mr. RAKER. I submit it to the Chair.

The CHAIRMAN. The point of order is sustained.

Mr. RAKER. I ask unanimous consent that I may have printed in the RECORD the letter of the Secretary of the Interior, dated January 2, 1913, and also a letter from the superintendent of the Bidwell Indian School, dated November 25, 1912, and a copy of the bill.

The CHAIRMAN. The gentleman from California asks unanimous consent to have printed the documents which he has indicated. Is there objection?

There was no objection.

The Clerk read as follows:

For support and education of 550 Indian pupils at the Sherman Institute, Riverside, Cal., and for pay of superintendent, $94,350; for general repairs and improvements, $10,000; in all, $104,350.

Mr. RAKER. Mr. Chairman, I offer the amendment which I send to the Clerk's desk.

The CHAIRMAN. The gentleman from California offers an amendment, which the Clerk will report.

The Clerk read as follows:

Amend, by striking out the words "five hundred and fifty," in line 24, page 10, and inserting in lieu thereof the words "seven hundred"; and strike out the figures "94,350," in line 1, page 11, and substitute therefor the figures "119,400"; and in line 2, page 11, strike out the figures "104,350" and insert in lieu thereof the figures "129,400."

Mr. STEPHENS of Texas. Mr. Chairman, I make the point of order against the amendment. I will withhold it if the gentleman desires to be heard.

Mr. RAKER. I desire to be heard on that point of order.

The CHAIRMAN. If the Chair understood the reading of the amendment correctly, it simply increases the amounts. Will the gentleman state the ground of his point of order?

Mr. STEPHENS of Texas. The ground is that it is new legislation. It increases the different items, does it not?

Mr. RAKER. That is all; just the amounts.

Mr. STEPHENS of Texas. I withdraw the point of order and call for a vote. I hope the amendment will be voted down.

Mr. RAKER. Mr. Chairman, there are three separate amendments——

Mr. STEPHENS of Texas. I ask that the debate on this close in five minutes.

Mr. RAKER. I want sufficient time to read the letter——

The CHAIRMAN. The gentleman from California has offered an amendment and has been recognized and has control of the floor, and can not be interrupted without his consent save on a point of order. The gentleman is recognized for five minutes.

Mr. RAKER. I desire to read a letter from the superintendent in regard to this matter.

Mr. STEPHENS of Texas. Is the gentleman aware that the department only estimated for 550 pupils?

Mr. RAKER. The department may have asked that, but here is the condition of affairs: Five hundred and fifty pupils are provided for, but the school will accommodate 700 without any more building, without any more expense for fuel, light, water, or general superintendence.

Mr. HAYDEN. Where are you going to get the other 150 Indians?

Mr. RAKER. I will tell you in just a moment. There are over 5,000 Indians close to this school, within a short distance, who are without educational facilities.

Mr. STEPHENS of Texas. Is the gentleman aware that the attendance at that school is only 493? You can not get Indians enough now to fill it. The capacity is now 550 and the attendance only 493.

Mr. RAKER. There are 624 enrolled. The superintendent has been compelled in the last six months to turn away many who are desirous to be admitted to this school, and has been compelled to permit no one to reenter this school in any way, shape, or form. Now, with a school of the capacity of 700, with all the expenses of superintendency, light, heat, equipment, and everything provided, does it not look like a poor piece of economy, when you could provide education, care, and attention for another 150 of these pupils by simply providing the absolutely necessary amount for their provisions and clothing, whereas if you put up another school it will cost you $150,000? Here you can get proper care and attention at an expense of $167 per capita per annum, instead of expending $100,000, as you are doing in these other schools.

Mr. MILLER. Will the gentleman yield?

Mr. RAKER. I yield.

Mr. MILLER. Is not the gentleman aware that many of the schools which we are maintaining and appropriating for in this bill have an insufficient number of pupils at present?

Mr. RAKER. They do not show that way from the report.

Mr. MILLER. Any number of them; and if perchance there should be a few who applied at this school who could not be accommodated there they could be at some of these other schools.

Mr. RAKER. Have you found any other school where you can accommodate 150 pupils without any additional expense to the Government, so far as the building, light, heat, superintendance, and general equipment are concerned?

Here you are saving to the Government $100,000 or $150,000 by providing for the Indians, by putting them in this school where you have an equipment provided for instead of building new buildings.

Mr. MILLER. If the gentleman will take the trouble to appear before the committee I think we can point out to him how they can be taken care of.

Mr. RAKER. The gentleman from Minnesota must admit that there has not been a meeting that we could appear before except the very first few days of this session.

Mr. MILLER. Oh, the gentleman must not say that, we have had many meetings.

Mr. RAKER. Since the first of the session?

Mr. MILLER. Not since January 1, but we have had many meetings this session.

Mr. RAKER. I think the gentleman is mistaken in that, because I have repeatedly asked for a hearing on these matters.

The CHAIRMAN. The time of the gentleman from California has expired. The question is on the amendment offered by the gentleman from California.

The question was taken, and the amendment was lost.

Mr. RAKER. Mr. Chairman, the vote upon this matter is so nearly divided, I do not care to take the further time of the House, but I ask permission to insert in the RECORD a letter,

together with the report and recommendation by the Chamber of Commerce of Riverside of December 16, 1912.

The CHAIRMAN. The gentleman from California asks unanimous consent to print in the RECORD a certain letter and papers which he has specified. Is there objection?

There was no objection.

The matter referred to is as follows:

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, December 28, 1912.

Hon. JOHN E. RAKER,
House of Representatives.

MY DEAR MR. RAKER: Answering yours of December 26, requesting me to furnish you with information relative to the condition of Sherman Institute and the advisability of increasing the appropriation to provide for an enrollment of 700 pupils, as requested by the Chamber of Commerce of Riverside, Cal., I have to advise you that the present appropriation provides for the support of 550 pupils. We can accommodate 700 pupils with the equipment we now have for 550. It will require no additional buildings for the increased enrollment and we can accommodate this additional number of pupils with the same general running expense for the number now provided for, as there will be practically no extra cost for light, fuel, water, and general superintendence, the only additional cost being the per capita appropriation of $167 for the additional number to be accommodated, or a total increase of $25,050.

A conservative estimate of the cost of a new plant to provide for the additional number of pupils would be $100,000, and it is certainly in the interest of economical administration to increase the enrollment of a school where the appropriation for buildings and equipment for the accommodation of pupils is unnecessary.

There will be no difficulty whatever in securing an enrollment of 700, or even a larger number if we have funds with which to support them. In November I canceled all orders for transportation of pupils and notified superintendents of neighboring reservations that it would be impossible for me to accept more pupils, on account of the school already having more than the number appropriated for, the attendance at that time being 570. In fact, each year during the past three years I have been compelled to refuse the admittance of a large number of applicants, as we did not have funds to support them. This condition, however, need not be surprising to those who understand actual conditions among the Indians of the Southwest. Among the Navajo Indians alone there are fully 5,000 children not in school. There are also approximately 1,000 Papago children without school facilities. The Indian population of California is over 16,000, with approximately 4,000 children of school age, many of whom are not in school.

Realizing the fact that industrial training is of prime importance to the Indian youth, I am laying especial emphasis on this class of work, and hope to make Sherman Institute one of the leading industrial schools. Conditions are most favorable for this training at this school. The city of Riverside and people in the vicinity are in thorough sympathy with the aims of the school, and the splendid opportunities for giving Indian boys and girls of the reservations the advantage of industrial training in the homes and on the ranches of southern California are of great value. In fact, I do not know of any school in the service where these conditions are more favorable. Climatic conditions are of the best, health conditions are good, and, in my opinion, there are the best of reasons for making appropriations for Sherman Institute that are equal to the largest schools of the Indian service.

I desire to invite your attention to the provision in the House bill as reported from the House Committee on Indian Affairs making appropriation of $10,000 for repairs and improvements for Sherman Institute, and to suggest that this should be increased to $15,000. I have repeatedly made recommendation to the Indian Office for $15,000 instead of $10,000 for general repairs and improvements, because it is in the interests of economical administration to keep the plant in good repair rather than to permit it to deteriorate. We have 46 buildings to keep in repair, as well as to keep in good condition the heating, water, sewer, and lighting systems, and $15,000 is a conservative estimate for this purpose.

The department has recommended to Congress $20,000 for new buildings and $15,000 for a heating system. These improvements, however, are not made necessary because of any contemplated increase in enrollment, but to increase the general efficiency of the plant. While I am desirous of obtaining the appropriation of $20,000 for new buildings, as recommended by the department, in order to provide better accommodations for employees, as well as a gymnasium for the students, this appropriation could be delayed for the present if considered absolutely necessary to do so. I am especially desirous of having an appropriation for a central heating plant, because it is in the interests of safety. We now have individual heaters in a number of buildings, which increase the danger of fire, and a central heating plant would be a decided improvement and lessen the danger of fire. In fact, the loss of one of our large dormitories would amount to more than the installation of an entire heating system for the school, and I would be pleased if this appropriation could be made at this time. The appropriation recommended is as follows:

For support and education of 700 Indian pupils at the Sherman Institute, Riverside, Cal., and for pay for superintendent	$119,400
For general repairs and improvements	15,000
For heating plant	15,000
For new buildings	20,000
Total	169,400

Yours, very truly,

F. M. CONSER, *Superintendent.*

DEPARTMENT OF THE INTERIOR,
Washington, January 2, 1913.

Hon. JOHN E. RAKER,
House of Representatives.

SIR: I have received your letter of December 23, addressed to the Commissioner of Indian Affairs, in which you inclose a copy of one from the Chamber of Commerce of Riverside, Cal., bearing upon the capacity of the Indian school located in that city.

In accordance with your request the following information is sent you concerning this school:

The rated capacity of this school is 550 pupils and the appropriations for some years past have made provisions for the maintenance of this number of pupils. Sleeping porches have been added to a number of the dormitories; and these can be used the entire year. Counting these, the dormitory capacity of the school is at least 700. The dining room and schoolrooms are also adequate to care for 700 pupils. If the support fund were increased so that it would care for 700 pupils, it would not be necessary to ask for any additional appropriations in the way of new school buildings to care for the additional number of pupils. A new building for employees' quarters is, however, urgently needed at this time. There would be little or no increase in the amount now spent for light, heat, water, and equipments, as the present expenditures for these purposes will provide for 700 almost as well as for 550. The superintendent is not now able to enroll all the pupils who have made application, and it is believed that he would have no difficulty in enrolling 700 pupils were he given authority to do so.

In view of the fact that the plant can now accommodate with its present equipment 700 pupils, it would be in the interest of economy in the expenditure of public funds to authorize the enrollment of 700 pupils, provided Congress would appropriate for the support of this number.

Respectfully,

SAMUEL ADAMS,
First Assistant Secretary.

RIVERSIDE CHAMBER OF COMMERCE,
Riverside, Cal., December 16, 1912.

Hon. JOHN E. RAKER,
Alturas, Cal.

DEAR SIR: We beg to bring to your notice the fact that, although the equipment of the Sherman Institute in this city provides for the housing and instruction of at least 700 Indian children, the appropriation for maintenance restricts the attendance to 550.

The institute, with its present enrollment, falls far short of meeting the need of the Indians of this district. There are reported to be at least 5,000 Navajo children and nearly 1,000 Papagos entirely without facilities for instruction beyond those afforded by the agency schools, and many of the children are entirely without school facilities. The maximum of enrollment under the present appropriation has already been reached, and reservation superintendents throughout the district have been notified to cease sending pupils in.

We would respectfully ask that you make inquiry concerning Sherman Institute conditions of Supt. F. M. Conser, who is to be in Washington shortly. The appropriations which have been recommended in the correspondence between the institute and the Indian Office are as follows: For support and education of 650 Indian pupils, $111,050; for general repairs and improvements, $15,000; a total of $126,050. Additional improvements are badly needed and would involve a further expense as follows: Heating system, $20,000; outside toilet facilities, $15,000; employees' quarters, $20,000; gymnasium, $20,000.

During the past years we have had abundant opportunity to observe the work being done at Sherman, and we believe the institution to be conducted in an exceedingly efficient way, our only regret being, as stated above, that the maintenance allowance keeps the number of pupils from 100 to 150 below the number which the dormitories and classrooms can conveniently accommodate. It seems to us that so expensive a plant ought to be run at its full capacity.

Respectfully, yours,

CHAMBER OF COMMERCE.
H. M. MAY, *Secretary.*

Mr. STEPHENS of Texas. Mr. Chairman, I ask unanimous consent that the Clerk may be authorized to change the totals wherever it may be found necessary.

The CHAIRMAN. The gentleman from Texas asks unanimous consent that the Clerk be authorized to change the totals wherever found necessary. Is there objection?

There was no objection.

Mr. STEPHENS of Texas. Mr. Chairman, I move that the committee do now rise and report the bill, together with the amendments, to the House, with the recommendation that the amendments be agreed to and that the bill as amended do pass.

The motion was agreed to.

Accordingly the committee determined to rise; and the Speaker having resumed the chair, Mr. SAUNDERS, Chairman of the Committee of the Whole House on the state of the Union, reported that that committee had had under consideration the bill H. R. 26874, the Indian appropriation bill, and had directed him to report the same back to the House with sundry amendments, with the recommendation that the amendments be agreed to and that the bill as amended do pass.

Mr. STEPHENS of Texas. Mr. Speaker, I move the previous question on the bill and amendments to final passage.

The previous question was ordered.

The SPEAKER. Is a separate vote demanded on any amendment? If not, the Chair will put them in gross.

There was no demand for a separate vote.

The amendments were agreed to.

The bill as amended was ordered to be engrossed and read a third time, was read the third time, and passed.

On motion of Mr. STEPHENS of Texas, a motion to reconsider the vote whereby the bill was passed was laid on the table.

LEAVE OF ABSENCE.

By unanimous consent, leave of absence was granted as follows:

To Mr. SAMUEL W. SMITH, indefinitely, on account of illness in family.

To Mr. BURKE of South Dakota, for three days, to attend a funeral.

POST OFFICE APPROPRIATION BILL.

Mr. MOON of Tennessee. Mr. Speaker, I move that the House resolve itself into Committee of the Whole House on the state of the Union for the consideration of the bill (H. R. 27148) making appropriations for the service of the Post Office Department for the fiscal year ending June 30, 1914, and for other purposes, and pending that I ask unanimous consent that general debate shall not exceed two hours, one half to be controlled by the gentleman from Kansas [Mr. MURDOCK] and the other half by the chairman of the committee.

Mr. MANN. Mr. Chairman, may I ask the gentleman from Kansas a question? The gentleman from Iowa [Mr. TOWNER] desired to obtain an hour on this bill if it did not come up to-day. If the gentleman from Iowa desires the time to-morrow, can not it be arranged?

Mr. MURDOCK. I suppose it can with the gentleman from Tennessee. There has been only one request for debate on this side, and that was for less than an hour.

Mr. MANN. Will not the gentleman make the request, so that the gentleman from Iowa [Mr. TOWNER] can have an extra hour, if he desires it, to-morrow?

Mr. MOON of Tennessee. What does the gentleman from Iowa want to talk about—the bill?

Mr. MANN. I do not know, but I assume not.

Mr. MURDOCK. If we can agree on three hours' general debate, an hour and a half on each side, I think that would take care of the gentleman from Iowa.

Mr. MANN. Yes; if he could get the hour.

Mr. MURDOCK. I will say that I would give him an hour.

Mr. MOON of Tennessee. I have no objection, Mr. Speaker, to three hours' general debate.

The SPEAKER. The gentleman from Tennessee moves that the House resolve itself into Committee of the Whole House on the state of the Union for the consideration of the Post Office appropriation bill, and, pending that, he asks unanimous consent that general debate on the bill be limited to three hours, an hour and a half to be controlled by himself and the other hour and a half by the gentleman from Kansas [Mr. MURDOCK]. Is there objection? [After a pause.] The Chair hears none.

The motion of Mr. MOON of Tennessee was then agreed to.

Accordingly the House resolved itself into Committee of the Whole House on the state of the Union, with Mr. GARRETT in the chair.

The CHAIRMAN. The House is in Committee of the Whole House on the state of the Union for the consideration of the bill H. R. 27148, which the Clerk will report.

The Clerk read the title of the bill.

Mr. MOON of Tennessee. Mr. Chairman, I ask unanimous consent to dispense with the first reading of the bill.

Mr. MANN. Reserving the right to object, may I ask if the first reading be now dispensed with, what is the intention of the gentleman from Tennessee—to move that the committee rise, or proceed with the general debate to-night?

Mr. MOON of Tennessee. If it is desired, and the gentleman from Iowa wants to put in his hour he can have the time now.

Mr. MANN. The gentleman from Iowa is not here to-day.

Mr. MOON of Tennessee. I shall ask the House to remain but a short time to-night.

Mr. MANN. I do not object.

The CHAIRMAN. Is there objection to the request of the gentleman from Tennessee to dispense with the first reading of the bill?

There was no objection.

Mr. MURDOCK. Mr. Chairman, I yield 30 minutes to the gentleman from Massachusetts [Mr. GILLETT].

Mr. GILLETT. Mr. Chairman, I think the most important question now confronting our Nation is, Whether we should submit to arbitration the dispute which has arisen with Great Britain concerning the Panama Canal tolls.

Congress during its last session provided in the Panama Canal bill that the vessels of the United States engaged in coastwise trade might pass through the canal without paying tolls. England claims that such an exemption is a discrimination in favor of our shipping, which is prohibited by our treaty with her. Whether or not her claim is just I do not propose now to discuss. I wish to confine myself to the one proposition that, regardless of our opinion of the merits of the question, whether we think her interpretation is right or ours is right, we ought to recognize that neither nation is so disinterested as to be able to judge of it impartially and that the isue should be submitted to arbitration.

This question is momentous, because it compels us in the face of an interested and critical world to disclose whether we will follow the path of profit or the path of honor; whether we have as a nation a real devotion to high ideals or whether we only advocate them in the hour of ease and desert them in the hour of trial. We have for years professed ourselves earnest advocates of arbitration. We have been the foremost to urge that war was irrational and that peaceful tribunals should gradually replace and abolish it. Our strength and wealth and isolation have relieved our advocacy from any imputation of fear or cowardice, and we have plumed ourselves that by our leadership and example we were advancing in the world the rule of reason and lessening the sway of brute force. Now our sincerity is put to the test. We can almost hear the voice of conscience say, "Choose ye this day whom ye will serve." And it is important not only to us, to our reputation, to our future influence, but it is important to the cause of arbitration, that we, its special promoter and champion, should not forsake it at the very first moment when it runs counter to our selfish interests. We have claimed to favor it because it was intrinsically fair and just, and ought to be ashamed to abandon it because we find it momentarily expensive and inconvenient.

I am aware that there is a fraction of our people who instinctively oppose arbitration—especially arbitration with England. There are some people who believe that occasional bloodletting is good for a nation, that without constant training for war we should become weaklings. There are others who believe that we are so strong and resourceful that no nation will ever dare to fight us, and that consequently we can safely do what we please and take what we want without fear of challenge, and that it would be foolish for us to renounce such a profitable irresponsibility in order to promote general justice and happiness. There is a still larger class who think little about the subject abstractly, but when any concrete case arises will always spring to the side that shows them a profit or an advantage and ignore a side which offers only justice. But the great body of thoughtful citizens—those who ultimately make public opinion—in their calm moments are genuinely anxious that their country shall do right. They appreciate the value of a good reputation to a man or a nation. But, more than that, they love uprightness, they prefer the rule of a judicial tribunal to the rule of the sword, and they wish their country to steadily lead in the movement toward international arbitration and peace regardless of the result on their immediate interests.

That sentiment, dormant but dominant, needs, I think, to assert itself at the present juncture. It is not a crisis which threatens war. Neither Great Britain nor the United States would deliberately sever our friendly relations because of this insignificant commercial gain or loss, although history gives many instances where differences as slight have engendered heat enough to ultimately inflame a war. But should we ignore England's contention because the incident is too trifling to provoke her into war? Is not that rather a reason why we should give her claims fair and courteous treatment? And what does that involve? Unquestionably a submission to The Hague or some other judicial tribunal, which for years we have urged was the proper resort for such disputes, which was established largely at our instance, and whose jurisdiction we have persistently sought to enlarge. And if this moral obligation to submit to its decision is not enough, we have the legal and technical obligation that by a solemn treaty with Great Britain we have agreed in advance to submit just this class of questions to arbitration. Why is there any doubt as to our action? I think it is only because the American people have not as yet given the subject sufficient attention to understand the conditions. For what public opinion decrees Congress will surely perform. If public opinion on this question becomes positive and outspoken, there is no danger that it will not be obeyed.

But I fear the view of the people to-day is only superficial. We built the canal, they say, with our money. We are to be at the expense of operating and defending it. Shall we not do as we please with our own? Are we not to be allowed to operate it for our profit? Must our vessels pay for the use of it? If so, why did we build it? Natural questions, and which, if unanswered, seem to justify us and put England in the wrong. Let us, then, consider briefly the facts.

In 1850, when both Great Britain and the United States were anxious to have the canal built, but were jealous of each other's influence in Central America, the two nations made a formal agreement which was intended to settle permanently all disputes which might grow out of the canal and was known as the Clayton-Bulwer treaty. The plan was that the two nations should together protect the canal whenever and wherever built and together guarantee its neutrality, and that it should be

open on equal terms to all nations who wished to join in its protection. One of the agreements was that neither nation should ever alone control the canal or fortify it or exercise any dominion over the territory through which it ran. So when, 20 years ago, upon the failure of the French canal, the United States began to seriously consider the project, we were confronted by this treaty, which bound us not to prosecute it alone. To get rid of that impediment was the first requisite step, and so we commenced negotiations with Great Britain, which finally resulted in the Hay-Pauncefote treaty of 1901, which expressly stated that it was framed to supersede the Clayton-Bulwer treaty and to remove the obstacle which that treaty presented to the United States constructing the canal alone. So we must bear in mind that up to 1901 we had bound ourselves not to build any canal except in cooperation with Great Britain, and that we were the ones who sought the Hay-Pauncefote treaty in order to release ourselves from that obligation.

But in order to obtain that right and get from England that release we were compelled to make certain promises and agreements. Those are the restrictions which hamper us in our control of the canal now. Except for them we should be free to use and maintain the canal as we please and levy tolls regardless of any other nation. But it was necessary for us to submit to these limitations, in order to escape from our old agreement not to build the canal at all alone. And though it seems at first blush unreasonable that we, who have been at the enormous expense of construction, should not have a free hand in operation, yet we must remember that we voluntarily submitted to these restrictions in order to get released from our previous agreement. Whether we made a good bargain then, whether we might not have negotiated better if we had clearly foreseen all the problems which arise now, is not the question. We thought then the bargain was satisfactory, and we bound ourselves to it, and that, I think, is the phase which the people do not generally understand. They do not appreciate that we had agreed not to build the canal alone; that to get rid of that agreement we entered into a new treaty, and that new treaty contained the restrictions which are now perplexing and troubling us. We sought that treaty; it was entered into to allow us to build the canal, and though we may find provisions in it which now embarrass us and do not allow us the freedom which seems natural and right, yet I do not see how anyone who understands it can contend that we must not strictly obey the provisions of this treaty which we ourselves sought and needed.

It is over the true meaning of some of these provisions that we and England are now at variance. And the proper place for their interpretation is a court of justice; not the legislative body of either of the interested parties. Now and then the claim is suggested that England in many ways violated the old Clayton-Bulwer treaty, and therefore we had and still have the right to claim that it was void and no longer bound us. On that ground some American statesmen were disposed, 15 years ago, instead of negotiating with England for its repeal, to begin building the canal without any regard to England's rights and objections, and some still suggest that as we were not really bound by the Clayton-Bulwer treaty we need not consider ourselves bound by its successor. That position is utterly untenable. It may be that Great Britain had so disregarded the Clayton-Bulwer treaty that we had once a right to avoid it. That is a question open to argument. But two Secretaries of State of two different political parties, each a man of ability and courage and patriotism, each anxious to maintain all the rights of his own country, but each conscious that he was the guardian and representative not only of his country's rights, but of his country's honor, both of these men, Richard Olney and John Hay, investigating the subject under that deep responsibility, came to the conclusion that the Clayton-Bulwer treaty was in full force and that it was necessary for us to secure from England our release before we could honorably undertake the canal alone. And the United States, acting upon that conclusion, has formally admitted the force of the Clayton-Bulwer treaty and expressly sanctioned the Hay-Pauncefote treaty in its place. So that it is too late now, if it was ever possible, to claim that we were not bound by the Clayton-Bulwer treaty, inasmuch as we have admitted its validity and agreed formally upon a substitute.

Having then purchased back from England the right to build and own the canal by ourselves, which we had once given away, we are limited in our conduct by the terms of this purchase. And while it may at times seem to us unfair, and we may fret at the necessity of giving up some cherished purpose, because it runs counter to our agreement, yet I think that no honest American would wish that Congress should legislate in palpable violation of our treaty, no matter how it might affect our commercial interests. And if Congress should enact provisions for the benefit of our merchant marine which Great Britain should claim violated the treaty, then I think it is equally clear and imperative that we, who have prided ourselves on our faith in arbitration, who have pressed it upon other nations almost at the point of the bayonet, should now, without hesitation, submit the true meaning and construction of this treaty to a judicial tribunal.

This is the point to which I have been leading and with which I am most concerned, for it is the point of danger. What is the true construction of the present treaty I do not wish to argue. Whether the contention of Great Britain or of the United States is correct I for the moment ignore. I only insist that as long as there is this difference of opinion between the two nations, no matter how confident we may be that we are right or how fearful we may be that we are wrong, we ought to agree instantly and cheerfully to submit it to arbitration. Great Britain claims that by the terms of the treaty we are forbidden to exempt even our coastwise trade from payment of tolls. We have in the canal bill provided for such exemption. And already we hear and read mutterings that this is not a case for arbitration; that we should let England do what she can about it; and that as it only affects our private internal policy England has no right to interfere. Many influential interests are concerned. The business of great States and cities is deeply affected, and strong, selfish forces will be enlisted to keep conditions as they are and allow no change by either legislation or arbitration. And, unless the people understand the situation and the agreements which have led up to it, they will be apt to say, "Why arbitrate a matter of our own concern? Can we not collect such tolls as we please from our own canal?" But it is a matter peculiarly within the scope of arbitration, for it is simply the interpretation of a treaty. And what I wish to impress and emphasize is that, whether our interpretation is right, or England's is right, whether the weight of argument is on our side or on hers, whichever is likely to be the final loser, inasmuch as there is a difference of opinion—a fair ground for dispute—we are bound by our principles and our precedents and our belief in international arbitration to submit the question to the decision of a court. The interpretation of a treaty is one of the especially enumerated items which our arbitration treaty with Great Britain binds us to submit to The Hague tribunal. But, regardless of that explicit treaty agreement, our respect for the principle of arbitration should lead us to volunteer it here, and not greedily and stubbornly insist upon our claims because we think England will not make war about them. Such conduct we would condemn and despise in others. I hope we shall not be so self-deceived, so unprincipled, and so shortsighted as to adopt it ourselves.

Of course, those who do not believe in the principle of international arbitration, who would like to see it checked and discountenanced, who believe in—

> The good old plan,
> That they should take who have the power
> And they should keep who can—

will argue that we ought to stand by what we think are our rights and allow no one to interfere or arbitrate. Those who are obsessed by a blind hatred of England will take the same side. But the great body of people who in recent years have hailed the progress of international arbitration as the opening of a better era for the world will recognize that here is an opportunity for us to show the sincerity and disinterestedness of our professions.

We are told all Europe would be prejudiced against us and we could not obtain impartial judges. I believe the judges of The Hague tribunal would honestly attempt to isolate their minds and judgments from local prejudice or favoritism and interpret the treaty as a question of pure law. But certainly their disinterestedness would be greater than that of the political leaders and newspapers who are now urging that we refuse arbitration because it would go against us. Congress in passing this legislation for the benefit of our coastwise trade and in now claiming that it does not violate the treaty is certainly not disinterested. I would rather submit to arbitration and be beaten than by rejecting arbitration discredit that whole movement and give cause to suspect that our advocacy of it was only for cases where we thought we should win. If we were compelled by the court to pay a substantial award, that money loss would be forgotten in a few years, while our refusal to arbitrate would give a setback to a noble cause whose effect might be felt for a generation.

There are three courses open to the United States. One is to repeal the provision exempting our coastwise trade from tolls, which England complains of as injurious to her commerce and a violation of the Hay-Pauncefote treaty. A large minority of

Congress opposed that provision on its merits and think it will be harmful instead of beneficial to the United States. Or, secondly, we can let the law stand and agree with England to submit to a judicial tribunal whether it was in violation of the treaty. If the court should find in our favor, no action would be necessary; but if the court should interpret the treaty to mean as England claims, that any exemption to our coastwise trade from tolls also exempted from tolls certain vessels of other nations, then we should be obliged to refund to such foreign vessels whatever tolls we had collected from them. Or, thirdly, we might do what is being urged as the true American course, decline to change the law, decline to arbitrate, and leave Great Britain to find such remedy as she can in peace or war.

I sincerely trust that will not prove to be the American course. It is in immediate results the selfish and advantageous course, as it follows simply our own inclinations and hopes of profit; and it will be urged that it is the spirited, courageous course, and that we must not allow other nations to interfere with our legislation. It will be easy also, by appealing to old memories to arouse hostile feeling toward Great Britain, for to go no further back than the Civil War no one can recall her conduct then in the hour of our trial and weakness without hot indignation and a thirst for revenge. But I hope another age has come and that in our relations toward all nations we shall feel that we are strong and magnanimous enough to bury past injuries and resentments and settle differences by the scale of even-handed justice. I hope the American people will feel that no selfish interest like our coastwise trade should tempt us from the path on which we have so deliberately entered of settling international disputes and especially the interpretation of treaties by courts of arbitration. In this particular instance we might gain by forsaking our principles, but I think the precedent would cost far more than the momentary profit. We should lose in character and self-respect, and they are of value to a nation as to a man.

I intended when I commenced not to consider any controverted issue, but to confine myself to showing that the dispute between England and the United States was clearly one for arbitration and that it would be disgraceful in us to refuse it.

There is one phase of the subject, however, which I have not seen discussed and which seems to me of such advantage to us that I can not refrain from alluding to it.

The treaty provides that the canal shall be "free and open to vessels of all nations observing these rules on terms of entire equality, so that there shall be no discrimination against any such nation in respect to the conditions or charges of traffic," and England contends that for us to exempt our coastwise steamers from paying tolls puts them on an inequality, while we claim that the phrase "all nations" does not include the United States, so that the requirement of equality does not apply to us. Into that controversy I shall not enter. But suppose, instead of exempting our vessels from paying tolls, we give back to them by way of subsidy what they have paid in tolls. That would be of exactly the same effect to our vessels—it would be exactly the same to the United States Treasury. But would it be the same as a matter of law in violating the treaty? I think not. It is certainly not a technical, literal violation of the treaty, because it does not conflict with the canal being free and open to all nations alike, which is what the treaty exacts. The tolls and conditions provided by the regulations would still be exactly the same for all nations. That is admitted in the English note. Then, if paying back the tolls does not violate the letter of the treaty, would it violate its spirit? Again I think not. The spirit is that all nations should be exactly on the same footing. All other nations certainly have the right to pay back to their own ships, in form of subsidy, the amount collected as tolls. Some nations have done it in the Suez Canal, from whose regulations ours were copied, and I understand Spain has already undertaken to do it for our canal. So that whether we do it or not if that constitutes an inequality there is certain to be inequality, for some nations are sure to subsidize. So for us to refrain from subsidizing would not produce equality. Indeed the only possibility of equality would be for every nation, including ourselves, to subsidize to the amount of the tolls and then all would be on terms of exact equality. Since, then, there can not be such equality, because some nations are sure to subsidize and some will not, it is obvious that that is not what was meant by the term "equality" in the treaty, because subsidizing by other nations would produce the same inequality as subsidizing by the United States. No one disputes the right of other nations to subsidize; when the treaty was made no one doubted it would occur, and therefore the right of the United States to subsidize, which would only produce the same kind of inequality, is clear. Consequently the inequality or discrimination produced by a nation subsidizing its own vessels was not intended to be prohibited and is no violation of the purpose of the treaty.

Therefore the United States has the right, both under the letter and the spirit of the law, to pay back to its vessels the tolls collected. Inasmuch as that would accomplish exactly the same result and would greatly strengthen our argument I think it would be wise to amend our law accordingly.

And there would follow another result from such a change which would still further strengthen our case. The treaty provides that all tolls shall be fair and equitable. It might be claimed by Great Britain that in determining what was a fair return on the investment, tolls on American vessels should be calculated. Otherwise foreign vessels would have to pay higher tolls in order to produce the reasonable income. All basis for such a claim and argument would be taken away if the law provided that American vessels should pay the same tolls as others, although they were repaid in the form of subsidies.

The only objection I can see is that many Members of Congress hate the word "subsidy," and while they are perfectly willing to vote for the result, shrink from voting for the name. But when it would so vastly fortify our position before a court, I hope they would conquer their scruples. I suppose England would still claim that it was a violation of the treaty, as she suggests in her note that it would be only a technical compliance. But I think that it conforms to the spirit as well as the letter. The mere fact that it accomplishes indirectly what is forbidden directly does not prove that it is illegal. There are innumerable instances of such validity. The most familiar to us is when the United States protects private lands from overflow by levees. A law authorizing that directly would be unconstitutional and void, but we constantly effect the same result by appropriating to improve the navigation of a stream, and while the result is the same the legality is entirely different. In this case, while the result is the same the process is different, and both the process and result are quite within the law, for the process is legal because not prohibited by the treaty and the result is legal for it was anticipated by the makers of the treaty and was inevitable.

Mr. TILSON. Mr. Chairman, before the gentleman leaves that subject, will he yield for a question?

Mr. GILLETT. Certainly.

Mr. TILSON. Does the gentleman believe Great Britain would be satisfied with that arrangement, if we, by a subterfuge of that kind, did exactly what England is objecting to?

Mr. GILLETT. I do not suppose England would be satisfied, but I do think that if we submitted it to a court of arbitration our position before that court would be a great deal stronger than it would be if we left the law as it is to-day.

Mr. TILSON. The gentleman admits that we have not gotten one peg ahead, if we make a law, by the provisions of which we give a subsidy to each vessel equal to the toll that vessel would pay.

Mr. GILLETT. Yes. As I say, it accomplishes the same result, but I think it accomplishes it in a manner which is far more likely to be held to be legal and not in violation of the treaty than the existing law.

There is one other point to which I wish to allude. In the discussion of our obligation to arbitrate under the treaty of 1908 with Great Britain, I have seen no allusion to an exception which may cover this case. That treaty provides that we shall refer all differences arising out of the interpretation of treaties to the Hague Court "provided they do not concern the interests of third parties." It is possible that a decision in this case would affect not only Great Britain but all other nations whose ships had passed through the canal and paid tolls, for the decision of the court, if it held that the exemption of our vessels from payment was a discrimination and illegal, might involve our reimbursing to all other vessels the tolls we had collected from them so that they should be on an equality with ours. Consequently if it concerns the interest of third parties we might not be under direct treaty obligation with Great Britain to submit this case to arbitration. But I think it still would be our duty to show our faith in the principle of judicial settlement and offer to submit it to a court with jurists from nations like Switzerland, sure to be impartial, or to such a tribunal as determined the Alaskan boundary dispute. The matter of importance is not so much the result or the method as that we should now in this matter of international concern prove that we are ready to abide by our national doctrine of arbitration.

It is worth something to earn the reputation of standing by your agreements and your principles regardless of results. I do not believe our reputation with the world at large is as good as we deserve. I suspect that if we saw ourselves as other

nations see us we should not be proud of the portrait. Foreign casual observers must have their attention attracted and their opinions formed mainly by the sensational incidents of our life. They must think of us as the Nation of homicides, where more murders are committed than in any other country called civilized; where mobs are constantly taking the law into their own hands with an atrocity that is inhuman; where trains are held up by bandits; where the police of our best known city, instead of defenders of the law, become its most frightful violators; where the heads of labor organizations, supposed to be the stalwart champions of the common people against oppression, combine to perpetrate the most dastardly and incredible outrages. These are some of the headlines which must catch the eye and bias the judgments of foreign readers. We know that behind these surface indications there is a depth of orderly, self-restrained, law-respecting public opinion which controls and determines the policy of this country; which believes in justice and fair play no matter who suffers from it; which knows that any violation of law or of treaty or of principle, because of momentary self-interest, works a deeper harm and a more permanent injury to the character and self-respect of the Nation than can be compensated by any material gain.

To that public opinion I appeal. I ask it to say firmly and decisively that inasmuch as England represents that one clause of our legislation violates our agreement with her and injures her, we should willingly either repeal the law or arbitrate the question whether it does violate the treaty, and cheerfully abide any decision by the tribunal. Not only our conscience, our honor, our pride demand that decision, but it might even be argued that an enlightened and farsighted self-interest also demand it; that despite our strength and isolation we need for our vast and growing foreign trade the respect and confidence and friendliness of other nations, which might easily be forfeited by our conduct here; that having every advantage in the competitions of peace any step toward the abolition of war makes directly to our gain. But I prefer to rest the case on the firmer and higher ground that regardless of interest our self-respect demands it. It ought to be enough for us that our treaty agreement and our settled policy alike require us to submit the question to arbitration. When that is clearly understood, I believe public opinion, the people, and the Congress will all be of one mind.

The President has recently declared publicly and unequivocally that he favors arbitration, but the efforts of this administration in that direction have more than once been blocked by the Senate. I hope it may not happen again. I hope the voice of public opinion will respond to his appeal so earnestly and unanimously that further opposition will be checked and the United States will take another upward step toward the rule of reason, the supremacy of law, and the reign of peace and good will among men. Such action would confirm our honorable position among the nations as the disinterested champion of arbitration, and would confound our critics and be worthy of ourselves. We are about to celebrate a hundred years of peace with Great Britain. How better can we celebrate it than by such an arbitration, which of itself would tend to make that peace perpetual.

We can help now to realize the noble aspiration voiced by Charles Sumner three-quarters of a century ago:

> Let us lay a new stone in the grand temple of universal peace, whose dome shall be as lofty as the firmament of heaven, as broad and comprehensive as the earth itself.

[Applause.]

Mr. MOON of Tennessee. Mr. Chairman, I yield to the gentleman from New York [Mr. CALDER].

Mr. CALDER. Mr. Chairman, the paragraph placed in the Post Office appropriation bill now under consideration for the benefit of the substitute letter carriers and post-office clerks is one that I sincerely hope and trust will meet with the hearty approval of every Member of this body. I have had occasion to give considerable thought and study to this branch of the postal service and have repeatedly called the attention of the Members of this House to the deplorable condition surrounding the employment of these substitutes. Knowing, as I do, the great handicap under which these men labor, I have often wondered why so many capable and efficient young men would make the sacrifices that they have in order to continue in the postal service. It is true that I have seen many capable and efficient young men who have taken the examination and received appointments to the substitute force give up their places in disgust after serving a short period of time.

It appears to me, Mr. Chairman, that it is our duty to legislate in a way that will tend to improve our public service, and one of the first requisites to perfect any business is to have competent and efficient employees. This is the policy pursued by the managers of every institution employing large numbers of men, but I venture the opinion that if the postal service was managed as a private institution the substitute service would have to be made far more inviting than it is at the present time before competent men could be induced to do the work. We all know that it is the glamour of the public service that acts as an inducement for so many young and ambitious men to enter it, and they will often put up with almost intolerable conditions in order to continue as employees of the Government.

The average earnings of these substitutes are not sufficient to maintain body and soul together, and it is only the possibility of receiving a regular appointment, with its attendant increases in salary each year until the maximum grade is reached, that acts as an inducement for many of them to continue. I stated in my remarks of April 12, 1912, when the Post Office appropriation bill was under consideration, that, to my mind, the position should be abolished altogether if the men were to be required to perform service under the present conditions. I believe it would be better for the Government if these men were to receive a regular salary during the time they serve as substitutes, and that the entrance salary after the substitute period has been served should be based in accordance with the time served as such substitute. In other words, if a man served as a substitute for a period of one year, his entrance salary should be $800; if he served as a substitute for a period of two years, his entrance salary should be $900; and if he served as a substitute for a period of three or more years, his entrance salary should be $1,000 per annum.

However, I am extremely gratified to know that the Post Office Committee has given so much attention to this very worthy branch of our postal service, and I congratulate the committee and the distinguished chairman from Tennessee for giving the House an opportunity to vote on this question. I shall vote in favor of this legislation because I believe it is just and equitable and is for the best interest of the public service. Knowing, as I do, the merit that it contains, I appeal to my colleagues who have not had an opportunity to give this question the same study that I have to sustain the committee and enact this legislation into law.

Mr. MOON of Tennessee. Mr. Chairman, I move that the committee do now rise.

The motion was agreed to.

Accordingly the committee rose; and the Speaker, having resumed the chair, Mr. GARRETT, Chairman of the Committee of the Whole House on the state of the Union, reported that that committee had had under consideration the bill H. R. 27148, the Post Office appropriation bill, and had come to no resolution thereon.

MESSAGE FROM THE PRESIDENT OF THE UNITED STATES.

A message from the President of the United States by Mr. Latta, one of his secretaries, announced that the President had approved and signed bills of the following titles:

On January 7, 1913:

H. R. 10169. An act to provide for holding the district court of the United States for Porto Rico during the absence from the island of the United States district judge and for the trial of cases in the event of the disqualification of or inability to act by the said judge.

On January 8, 1913:

H. R. 10648. An act amending an act entitled "An act to authorize the registration of trade-marks used in commerce with foreign nations or among the several States or with the Indian tribes, and to protect the same."

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. Crockett, one of its clerks, announced that the Senate had passed the following resolution, in which the concurrence of the House of Representatives was requested:

Resolved by the Senate (the House of Representatives concurring), That there be printed 30,000 copies of the Judicial Code of the United States, prepared under the direction of the Judiciary Committee of the Senate, 10,000 copies for the use of the House of Representatives and 5,000 copies for the use of the Senate document room.

ADJOURNMENT.

Mr. MOON of Tennessee. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 5 o'clock and 19 minutes p. m.) the House adjourned until to-morrow, Friday, January 10, 1913, at 12 o'clock noon.

EXECUTIVE COMMUNICATIONS.

Under clause 2 of Rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

1. A letter from the Secretary of the Treasury, submitting report as to rents received from properties located on sites of proposed public buildings purchased by the United States Gov-

ernment in the city of Washington, D. C. (H. Doc. No. 1253); to the Committee on Appropriations and ordered to be printed.

2. A letter from the Secretary of the Treasury, submitting estimate of appropriation to defray expenses of a representative of the Treasury Department to the International Congress of Customs Regulations, to be held at Paris in May, 1913 (H. Doc. No. 1254); to the Committee on Appropriations and ordered to be printed.

3. A letter from the Secretary of State, submitting detailed statement of fees collected, accounted for, and reported by the diplomatic and consular officers, including passport fees collected and accounted for by the Department of State, for the fiscal year ended June 30, 1912, and also detailed statement showing transactions under appropriation for "Relief and protection of American seamen, 1912" (H. Doc. No. 1255); to the Committee on Expenditures in the Department of State and ordered to be printed.

4. A letter from the Secretary of State, transmitting pursuant to law an authentic copy of the certificate of final ascertainment of electors for President and Vice President appointed in the State of Pennsylvania at the election held therein on November 5, 1912; to the Committee on Election of President, Vice President, and Representatives in Congress.

5. A letter from the Secretary of State, transmitting pursuant to law an authentic copy of the certificate of final ascertainment of electors for President and Vice President appointed in the State of Missouri at the election held therein on November 5, 1912; to the Committee on Election of President, Vice President, and Representatives in Congress.

REPORTS OF COMMITTEES ON PRIVATE BILLS AND RESOLUTIONS.

Under clause 2 of Rule XIII,

Mr. WILSON of New York, from the Committee on Pensions, to which was referred sundry bills, reported in lieu thereof the bill (H. R. 27874) granting pensions and increase of pensions to certain soldiers and sailors of the Regular Army and Navy, and certain soldiers and sailors of wars other than the Civil War, and to widows of such soldiers and sailors, accompanied by a report (No. 1284), which said bill and report were referred to the Private Calendar.

CHANGE OF REFERENCE.

Under clause 2 of Rule XXII, committees were discharged from the consideration of the following bills, which were thereupon referred as follows:

A bill (H. R. 27426) granting a pension to Gertrude M. Farrar; Committee on Invalid Pensions discharged, and referred to the Committee on Pensions.

A bill (H. R. 27428) confirming titles of Deborah A. Griffin and Mary J. Griffin, and for other purposes; Committee on the Public Lands discharged, and referred to the Committee on Indian Affairs.

PUBLIC BILLS, RESOLUTIONS, AND MEMORIALS.

Under clause 3 of Rule XXII, bills, resolutions, and memorials were introduced and severally referred as follows:

By Mr. GARNER: A bill (H. R. 27875) authorizing the President to convey certain land to the State of Texas; to the Committee on Military Affairs.

By Mr. RODENBERG: A bill (H. R. 27876) to provide for the participation of the United States in the Panama-Pacific International Exposition; to the Committee on Industrial Arts and Expositions.

By Mr. SMITH of New York: A bill (H. R. 27877) to amend section 25 of the act approved August 5, 1909, entitled "An act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes"; to the Committee on Ways and Means.

By Mr. RAKER: A bill (H. R. 27878) making an appropriation for a series of thorough and elaborate investigations and experiments for the purpose of devising and perfecting a system of frost prevention in the citrus and deciduous fruit regions, and for other purposes; to the Committee on Agriculture.

By Mr. HELGESEN: A bill (H. R. 27879) providing authority for the Northern Pacific Railway Co. to construct a bridge across the Missouri River in section 36, township 134 north, range 79 west, in the State of North Dakota; to the Committee on Interstate and Foreign Commerce.

By Mr. PALMER: A bill (H. R. 27880) to provide for the appointment of an additional district judge in and for the eastern district of Pennsylvania; to the Committee on the Judiciary.

By Mr. PROUTY: A bill (H. R. 27881) to enjoin and abate houses of lewdness, assignation, and prostitution; to declare the same to be nuisances; to enjoin the person or persons who conduct or maintain the same and the owner or agent of any building used for such purpose; and to assess a tax against the person maintaining said nuisance and against the building and owner thereof; to the Committee on the District of Columbia.

By Mr. KAHN: A bill (H. R. 27882) to amend an act entitled "An act to improve the efficiency of the personnel of the Revenue-Cutter Service"; to the Committee on Interstate and Foreign Commerce.

Also, a bill (H. R. 27883) to amend section 3221 of the Revised Statutes of the United States as amended by section 6 of the act of March 1, 1879; to the Committee on Ways and Means.

By Mr. LEVER: Resolution (H. Res. 769) authorizing the printing of 2,000 additional copies of hearings on H. R. 18160, "agricultural extension departments"; to the Committee on Printing.

By Mr. HARRISON of Mississippi: Resolution (H. Res. 770) requesting information from the Secretary of the Interior; to the Committee on Indian Affairs.

By Mr. LOBECK: Concurrent resolution (H. Con. Res. 67) authorizing the Attorney General to institute suit to determine the legitimacy of sale of Georgetown Gas Light Co. stock to the Washington Gas Light Co.; to the Committee on the Judiciary.

PRIVATE BILLS AND RESOLUTIONS.

Under clause 1 of Rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. WILSON of New York: A bill (H. R. 27874) granting pensions and increase of pensions to certain soldiers and sailors of the Regular Army and Navy, and certain soldiers and sailors of wars other than the Civil War, and to widows of such soldiers and sailors; to the Committee of the Whole House.

By Mr. ANTHONY: A bill (H. R. 27884) granting a pension to Richard H. Cutter; to the Committee on Invalid Pensions.

Also, a bill (H. R. 27885) granting a pension to Francis M. Jones; to the Committee on Pensions.

Also, a bill (H. R. 27886) granting an increase of pension to John Sanderson; to the Committee on Invalid Pensions.

Also, a bill (H. R. 27887) granting an increase of pension to Edmund J. Holman; to the Committee on Invalid Pensions.

Also, a bill (H. R. 27888) granting an increase of pension to Andrew De Veau; to the Committee on Invalid Pensions.

By Mr. BYRNES of South Carolina: A bill (H. R. 27889) granting a pension to Ernest Holmes; to the Committee on Pensions.

Also, a bill (H. R. 27890) granting an increase of pension to Lucretia Grice; to the Committee on Invalid Pensions.

By Mr. BYRNS of Tennessee: A bill (H. R. 27891) for the relief of the estate of Hiram Jenkins; to the Committee on War Claims.

By Mr. CULLOP: A bill (H. R. 27892) granting a pension to Sarah E. Dillon; to the Committee on Invalid Pensions.

Also, a bill (H. R. 27893) to correct the military record of Martin All; to the Committee on Military Affairs.

By Mr. DONOHOE: A bill (H. R. 27894) granting an increase of pension to Edward J. Baker; to the Committee on Pensions.

By Mr. FAISON: A bill (H. R. 27895) for the relief of the heirs of Nancy Barfield, deceased; to the Committee on War Claims.

By Mr. GOULD: A bill (H. R. 27896) granting an increase of pension to John A. Ripley; to the Committee on Invalid Pensions.

By Mr. HAMILTON of West Virginia: A bill (H. R. 27897) for the relief of Joseph P. Jones; to the Committee on Claims.

By Mr. HAYDEN: A bill (H. R. 27898) for the relief of the administrator and heirs of Fritz Contzen, to permit the prosecution of an Indian depredation claim; to the Committee on Indian Affairs.

By Mr. HENSLEY: A bill (H. R. 27899) for the relief of the heirs of A. P. Thompson, deceased; to the Committee on War Claims.

By Mr. LA FOLLETTE: A bill (H. R. 27900) for the relief of Ernest W. Grant; to the Committee on the Public Lands.

By Mr. LANGLEY: A bill (H. R. 27901) granting a pension to Noah Smith; to the Committee on Pensions.

By Mr. MADDEN: A bill (H. R. 27902) for the relief of John Inglis; to the Committee on Military Affairs.

By Mr. MARTIN of Colorado: A bill (H. R. 27903) granting an increase of pension to Samuel Galloway; to the Committee on Invalid Pensions.

By Mr. PRINCE: A bill (H. R. 27904) granting a pension to William Dotson; to the Committee on Pensions.

By Mr. PROUTY: A bill (H. R. 27905) granting an increase of pension to John M. Cochran; to the Committee on Invalid Pensions.

By Mr. RUBEY: A bill (H. R. 27906) granting a pension to Addie Davidson; to the Committee on Invalid Pensions.

PETITIONS, ETC.

Under clause 1 of Rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

By Mr. ALLEN: Petition of the Association of National Advertising Managers, protesting against the passage of House bill 23417, prohibiting the fixing of prices by manufacturers of patent goods; to the Committee on Patents.

By Mr. ASHBROOK: Petition of the Massachusetts Association of Sealers of Weights and Measures, favoring the passage of House bill 23113, fixing a standard barrel for the shipment of fruits, vegetables, etc.; to the Committee on Weights and Measures.

Also, petition of the National Brotherhood of Locomotive Engineers, favoring the passage of Senate bill 5382, the workman's compensation bill; to the Committee on the Judiciary.

Also, petition of J. F. Reiser and 3 other merchants of Tuscarawas, Ohio, favoring the passage of legislation giving the Interstate Commerce Commission further power over the express companies; to the Committee on Interstate and Foreign Commerce.

By Mr. AYRES: Memorial of the Chamber of Commerce of the State of New York, protesting against any legislation proposing any change in the Harter Act, relative to the carriage of cargo by sea; to the Committee on Interstate and Foreign Commerce.

By Mr. BYRNS of Tennessee: Papers to accompany bill for the relief of the estate of Hiram Jenkins; to the Committee on War Claims.

By Mr. CALDER: Petition of the Long Island Game Protective Association, favoring the passage of House bill 36, for Federal protection to migratory birds; to the Committee on Agriculture.

By Mr. DYER: Petition of R. S. Hawes, St. Louis, Mo., favoring the passage of Senate bill 957, for the regulation of bills of lading; to the Committee on Interstate and Foreign Commerce.

Also, petition of the Whitman Agriculture Co., St. Louis, Mo., favoring the passage of House bill 25106, giving a Federal charter to the Chamber of Commerce of the United States of America; to the Committee on the Judiciary.

By Mr. GRIEST: Resolution adopted by the Vermont Association of Sealers of Weights and Measures, urging the enactment into law of House bill 23113, fixing a standard for the shipment of fruits and vegetables, etc.; to the Committee on Coinage, Weights, and Measures.

By Mr. HAMILTON of West Virginia: Papers to accompany bill for the relief of Joseph P. Jones; to the Committee on Claims.

By Mr. HENSLEY: Petition of the German-American Alliance, De Soto, Mo., protesting against the passage of Senate bill 4043, prohibiting the shipment of liquor into dry territory; to the Committee on the Judiciary.

By Mr. LEE of Pennsylvania: Petition of the Philadelphia Maritime Exchange, favoring the passage of Senate bill 7503, providing for a reduction on first-class mail matter; to the Committee on the Post Office and Post Roads.

By Mr. REILLY: Petition of the Connecticut Federation of Women's Clubs, New Haven, Conn., favoring the passage of the Page bill (S. 3) giving Federal aid to vocational education; to the Committee on Agriculture.

By Mr. REYBURN: Petition of the Philadelphia Maritime Exchange, favoring the passage of Senate bill 7503, reducing the postage on first-class mail matter; to the Committee on the Post Office and Post Roads.

By Mr. SLOAN: Petition of the Church of Brethren, Carlisle, Nebr., favoring the passage of the Kenyon "red light" injunction bill for the cleaning up of Washington for the inauguration; to the Committee on the District of Columbia.

Also, petition of citizens of Polk County, Nebr., protesting against the passage of any legislation looking toward the enlargement of the parcel-post zone bill; to the Committee on the Post Office and Post Roads.

By Mr. TILSON: Petition of Harry P. Bliss, Middletown, Conn., making a suggestion relative to the bill for naturalization, etc.; to the Committee on Immigration and Naturalization.

By Mr. UNDERHILL: Petition of the Federation of Jewish Farmers of America, favoring the passage of legislation establishing a system of farmers' credit unions; to the Committee on Banking and Currency.

Also, petition of the Association of National Advertising Managers of the United States of America, protesting against the passage of section 2 of House bill 23417, prohibiting the fixing of prices by manufacturers of patent goods; to the Committee on Patents.

Also, petition of a committee appointed at an informal meeting at the time of the meeting of the National Association of State Universities at Washington, D. C., protesting against the passage of Senate bill 3, for vocational education; to the Committee on Agriculture.

Also, petition of the New York Civic League, New York, favoring the passage of legislation prohibiting the shipment of liquor into dry territory for illegal purposes; to the Committee on the Judiciary.

By Mr. WICKERSHAM: Petition of the people of Wrangell, Alaska, favoring the passage of legislation to prevent the setting of traps in the tidal waters of Alaska; to the Committee on the Territories.

By Mr. WILLIS: Papers to accompany bill (H. R. 18219) granting a pension to Catherine Alspach; to the Committee on War Claims.

By Mr. WILSON of New York: Petition of the Chamber of Commerce of the State of New York, protesting against the passage of Senate bill 7208, proposing several changes in the laws of the United States relating to the carriage of cargo by sea; to the Committee on Interstate and Foreign Commerce.

By Mr. WOOD of New Jersey: Papers to accompany House bill 27873, granting an increase of pension to James G. Hagamen; to the Committee on Invalid Pensions.

SENATE.

FRIDAY, *January 10, 1913.*

Prayer by the Chaplain, Rev. Ulysses G. B. Pierce, D. D.

The Journal of yesterday's proceedings was read and approved.

ELECTORS FOR PRESIDENT AND VICE PRESIDENT.

The PRESIDENT pro tempore laid before the Senate a communication from the Secretary of State, transmitting, pursuant to law, an authentic copy of the certificate of ascertainment of electors for President and Vice President appointed in the State of New York at the election held in that State on November 5, 1912, which was ordered to be filed.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by D. K. Hempstead, its enrolling clerk, announced that the House had passed a bill (H. R. 26874) making appropriations for the current and contingent expenses of the Bureau of Indian Affairs, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June 30, 1914, in which it requested the concurrence of the Senate.

PETITIONS AND MEMORIALS.

The PRESIDENT pro tempore presented a memorial of the officers of the Twentieth Century Club, of Washington, D. C., remonstrating against the enactment of legislation granting authority to the several States to dispose of their natural resources, which was referred to the Committee on Conservation of National Resources.

Mr. PAGE presented a memorial of sundry citizens of Middletown Springs, Vt., remonstrating against the enactment of legislation providing for the parole of Federal life prisoners, which was ordered to lie on the table.

Mr. GALLINGER presented a petition of the Woman's Christian Temperance Union of Berlin, N. H., praying that an appropriation be made for the construction of a public building in that city, which was referred to the Committee on Public Buildings and Grounds.

He also presented a petition of members of Porter Garrison, Army and Navy Union, of Washington, D. C., praying for the passage of the so-called police and firemen's pension bill, which was referred to the Committee on the District of Columbia.

He also presented a petition of the congregation of the Rhode Island Avenue Methodist Episcopal Church, of Washington, D. C., and a petition of members of the Southwest Colored Citizens' Association, of Washington, D. C., praying for the passage of the so-called Kenyon red-light injunction bill, which were referred to the Committee on the District of Columbia.

Mr. BRISTOW presented sundry papers to accompany the bill (S. 2305) providing for the adjustment and payment of accounts to laborers and mechanics under the eight-hour law, which were referred to the Committee on Education and Labor.

Mr. DU PONT presented a petition of the Chamber of Commerce of Aberdeen, Wash., praying that an appropriation be